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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2015 - * 09
Amendment No. (req. for Amendments *)

Filing by Municipal Securities Rulemaking Board

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * ☑ Amendment * ☐ Withdrawal ☐

Section 19(b)(2) * ☑ Section 19(b)(3)(A) * ☐ Section 19(b)(3)(B) * ☐

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Rule

- ☐ 19b-4(f)(1)
- ☐ 19b-4(f)(2)
- ☐ 19b-4(f)(3)
- ☐ 19b-4(f)(4)
- ☐ 19b-4(f)(5)
- ☐ 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) * ☐ Section 806(e)(2) * ☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document ☐ Exhibit 3 Sent As Paper Document ☐

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposed Amendments to Rule G-20, on Gifts, Gratuities and Non-Cash Compensation, and Rule G-8, on Books and Records to be Made by Brokers, Dealers, Municipal Securities Dealers, and Municipal Advisors, and Deletion of Prior Interpretive Guidance

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Michael Last Name * Post

Title * General Counsel - Regulatory Affairs

E-mail * mpost@msrb.org

Telephone * (703) 797-6600 Fax (703) 797-6700

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

Municipal Securities Rulemaking Board
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 09/02/2015

By Ronald W. Smith

(Name *)

(Title *)

Corporate Secretary

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Persona Not Validated - 1422382132618,

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Exhibit Sent As Paper Document

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act"),[1] and Rule 19b-4 thereunder,[2] the Municipal Securities Rulemaking Board (the "MSRB" or "Board") is filing with the Securities and Exchange Commission (the "SEC" or "Commission") a proposed rule change consisting of proposed amendments to Rule G-20 (with amendments, "proposed amended Rule G-20"), on gifts, gratuities and non-cash compensation, proposed amendments to Rule G-8, on books and records to be made by brokers, dealers, municipal securities dealers, and municipal advisors, and the deletion of prior interpretive guidance that would be codified by proposed amended Rule G-20 (the "proposed rule change"). The MSRB requests that the proposed rule change be approved with an implementation date six months after the Commission approval date for all changes.

(a) The text of the proposed rule change is attached as Exhibit 5. Text proposed to be added is underlined, and text proposed to be deleted is enclosed in brackets.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board at its January 28-29, 2015 meeting. Questions concerning this filing may be directed to Michael L. Post, General Counsel – Regulatory Affairs, Pamela K. Ellis, Associate General Counsel, or Benjamin A. Tecmire, Counsel at (703) 797-6600.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

Following the financial crisis of 2008, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").[3] The Dodd-Frank Act amended Section 15B of the Exchange Act to establish a new federal regulatory regime requiring municipal advisors to register with the Commission, deeming them to

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 Pub. Law No. 111-203, 124 Stat. 1376 (2010).

owe a fiduciary duty to their municipal entity clients and granting the MSRB rulemaking authority over them. The MSRB, in the exercise of that rulemaking authority, has been developing a comprehensive regulatory framework for municipal advisors and their associated persons.[4] Important elements of that regulatory framework are the proposed amendments to Rules G-20[5]and G-8.

The proposed rule change would further the purposes of the Exchange Act, as amended by the Dodd-Frank Act, by addressing improprieties and conflicts that may arise when municipal advisors and/or their associated persons give gifts or gratuities to employees who may influence the award of municipal advisory business. Extending the policies embodied in existing Rule G-20 to municipal advisors through proposed amended Rule G-20 would ensure common standards for brokers, dealers, and municipal securities dealers ("dealers") and municipal advisors (dealers, together with municipal advisors, "regulated entities") that all operate in the municipal securities market.[6]

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4 MSRB Rule D-11 defines "associated persons" as follows:

> Unless the context otherwise requires or a rule of the Board otherwise specifically provides, the terms "broker," "dealer," "municipal securities broker," "municipal securities dealer," "bank dealer," and "municipal advisor" shall refer to and include their respective associated persons. Unless otherwise specified, persons whose functions are solely clerical or ministerial shall not be considered associated persons for purposes of the Board's rules.

5 Existing Rule G-20 is designed, in part, to minimize the conflicts of interest that arise when a dealer attempts to induce organizations active in the municipal securities market to engage in business with such dealers by means of personal gifts or gratuities given to employees of such organizations. Rule G-20 helps to ensure that a dealer's municipal securities activities are undertaken in arm's length, merit-based transactions in which conflicts of interest are minimized. See MSRB Notice 2004-17 (Jun. 15, 2004).

6 MSRB Rule G-17 is the MSRB's fundamental fair-dealing rule. It provides that a dealer or municipal advisor, in the conduct of its municipal securities activities or municipal advisory activities, shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice. As frequently previously stated, Rule G-17 may apply regardless of whether Rule G-20 or any other MSRB rule also may be applicable to a particular set of facts and circumstances. See, e.g., Interpretative Notice Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities (Aug. 2, 2012) (reminding underwriters of the application of Rule G-20, in addition to their obligations under Rule G-17).

Proposed Amended Rule G-20

In summary, the proposed amendments to Rule G-20 would:

- Extend the relevant existing provisions of the rule to municipal advisors and their associated persons and to gifts given in relation to municipal advisory activities;

- Consolidate and codify interpretive guidance, including interpretive guidance published by the Financial Industry Regulatory Authority, Inc. ("FINRA") and adopted by the MSRB, to ease the compliance burden on regulated entities that must understand and comply with these obligations, and delete prior interpretive guidance that would be codified by proposed amended Rule G-20; and

- Add a new provision to prohibit the seeking or obtaining of reimbursement by a regulated entity of certain entertainment expenses from the proceeds of an offering of municipal securities.

Further, proposed amended Rule G-20 would include several revisions that are designed to assist regulated entities and their associated persons with their understanding of and compliance with the rule. Those revisions include the definition of additional key terms and the addition of a paragraph that sets forth the purpose of the rule. Proposed amended Rule G-20 is discussed below.

A. Extension of Rule G-20 to Municipal Advisors and Municipal Advisory Activities and Clarifying Amendments

Proposed amended Rule G-20 would extend to municipal advisors and their associated persons: (i) the general dealer prohibition of gifts or gratuities in excess of $100 per person per year in relation to the municipal securities activities of the recipient's employer (the "$100 limit"); (ii) the exclusions contained in the existing rule from that general prohibition (including certain consolidations and the codifications of prior interpretive guidance) and the addition of bereavement gifts to those exclusions; and (iii) the existing exclusion relating to contracts of employment or compensation for services. Proposed section (g), on non-cash compensation in connection with primary offerings, would not be extended to municipal advisors or to associated persons thereof.

(i) General prohibition of gifts or gratuities in excess of $100 per year

Proposed section (c) (based on section (a) of existing Rule G-20) would extend to a municipal advisor and its associated persons the provision that currently prohibits a dealer and its associated persons, in certain circumstances, from giving directly or indirectly any thing or service of value, including gratuities ("gifts"), in excess of $100 per year to a person (other than an employee of the dealer). As proposed, the prohibited payments or services by a dealer or municipal advisor or associated persons would be those provided in relation to the municipal securities activities or municipal advisory

activities of the employer of the recipient (other than an employee of the regulated entity).

(ii) Exclusions from the $100 limit

Proposed section (d) (based on section (b) of existing Rule G-20) would extend to a municipal advisor and its associated persons the provision that excludes certain gifts from the $100 limit of proposed section (c) as long as the conditions articulated by proposed section (d) and the relevant subsection, as applicable, are met. Proposed section (d) also would state that gifts, in order to be excluded from the $100 limit, must not give rise to any apparent or actual material conflict of interest.

Proposed section (d) would include proposed subsections (d)(i) through (d)(iv) and (d)(vi) that would consolidate and codify interpretive guidance that the MSRB provided in MSRB Notice 2007-06 (the "2007 MSRB Gifts Notice").[7] That notice encouraged dealers to adhere to the highest ethical standards and reminded dealers that Rule G-20 was designed to "avoid conflicts of interest."[8] The 2007 MSRB Gifts Notice's interpretive guidance also included FINRA guidance that the MSRB had adopted by reference.[9] Further, proposed subsection (d)(v) would codify FINRA interpretive guidance relating to bereavement gifts that the MSRB previously had not adopted.[10] The MSRB believes that these proposed codifications will (i) enhance the understanding of the interpretive guidance applicable to the exclusions, (ii) foster compliance with the rule,

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7 See Dealer Payments in Connection with the Municipal Issuance Process, MSRB Notice 2007-06 (Jan. 29, 2007).

8 Id.

9 See 2007 MSRB Gifts Notice (reminding dealers of the application of Rule G-20 and Rule G-17 in connection with certain payments made and expenses reimbursed during the municipal bond issuance process, and stating that the National Association of Securities Dealers, Inc.'s ("NASD") guidance provided in NASD Notice to Members 06-69 (Dec. 2006) to assist dealers in complying with NASD Rule 3060 applies as well to comparable provisions of Rule G-20).

10 See FINRA Letter to Amal Aly, SIFMA (Reasonable and Customary Bereavement Gifts), dated December 17, 2007 (stating that FINRA staff agrees that reasonable and customary bereavement gifts (e.g., appropriate flowers, food platter for the mourners, perishable items intended to comfort the recipient or recipient's family) are not "in relation to the business of the employer of the recipient" under FINRA Rule 3060, but that bereavement gifts beyond what is reasonable and customary would be deemed to be gifts in relation to the business of the employer of the recipient and subject to the $100 limit of Rule 3060) ("FINRA bereavement gift guidance").

and (iii) enhance efficiencies for regulated entities and regulatory enforcement agencies. A more detailed discussion of the subsections to proposed section (d) is provided below.

Proposed subsection (d)(i) would exclude, as is currently the case for dealers under existing Rule G-20, a gift of meals or tickets to theatrical, sporting, and other entertainment given by a regulated entity or its associated persons from the $100 limit if they are a "normal business dealing." The regulated entity or its associated persons would be required to host the gifted event, as is currently the case for dealers. If the regulated entity or its associated persons were to fail to host gifts of these types, then those gifts would be subject to the $100 limit. In addition, the regulated entity would be excluded from the $100 limit if it were to sponsor legitimate business functions that are recognized by the Internal Revenue Service as deductible business expenses. Finally, municipal advisors and their associated persons would be held to the same standard as dealers, in that gifts would not qualify as "normal business dealings" if they were "so frequent or so extensive as to raise any question of propriety."

Proposed subsections (d)(ii) through (iv) would establish three categories of gifts that previously were excluded from the $100 limit under the category of "reminder advertising" in the rule language regarding "normal business dealings" in existing section (b) of Rule G-20. The MSRB believes that these more specific categories in the proposed new subsections will assist regulated entities with their compliance obligations by providing additional guidance on the types of gifts that constitute reminder advertising under the existing rule. Those more specific categories are:

- gifts commemorative of a business transaction, such as a desk ornament or Lucite tombstone (proposed subsection (d)(ii));

- de minimis gifts, such as pens and notepads (proposed subsection (d)(iii)); and

- promotional gifts of nominal value that bear an entity's corporate or other business logo and that are substantially below the $100 limit (proposed subsection (d)(iv)).

Proposed subsection (d)(v) would exclude bereavement gifts from the $100 limit. That proposed subsection would consolidate and codify the FINRA bereavement gift guidance currently applicable to dealers that exempts customary and reasonable bereavement gifts from the $100 limit. Under proposed subsection (d)(v), the bereavement gift would be required to be reasonable and customary for the circumstances.

Finally, proposed subsection (d)(vi) would exclude personal gifts given upon the occurrence of infrequent life events, such as a wedding gift or a congratulatory gift for the birth of a child. Similar to proposed subsection (d)(v), proposed subsection (d)(vi) would consolidate and codify the FINRA personal gift guidance currently applicable to dealers. That guidance exempts personal gifts that are not "in relation to the business of

the employer of the recipient"[11] from the $100 limit. Proposed paragraph .04 of the Supplementary Material, discussed below, would provide guidance as to types of personal gifts that generally would not be subject to the $100 limit.

With regard to proposed subsections (d)(ii) through (vi), the "frequency" and "extensiveness" limitations applicable to proposed subsection (d)(i) would not apply. The MSRB is proposing to modify those limitations to better reflect the characteristics of the gifts described in proposed subsections (d)(ii) through (vi). Gifts described in those subsections would be gifts that are not subject to the $100 limit, and, typically would not give rise to a conflict of interest that Rule G-20 was designed to address. Transaction-commemorative gifts, de minimis gifts, promotional gifts, bereavement gifts, and personal gifts, as described in the proposed rule change, by their nature, are given infrequently and/or are of such nominal value that retaining the requirement that such gifts be "not so frequent or extensive" would be unnecessarily duplicative of the description of these gifts and could result in confusion.

To assist regulated entities with their understanding of the rule's exclusions and with their compliance with the rule, the proposed rule change would provide guidance regarding promotional gifts and "other business logos" (proposed paragraph .03 of the Supplementary Material) and personal gifts (proposed paragraph .04 of the Supplementary Material). Specifically, proposed paragraph .03 would clarify that the logos of a product or service being offered by a regulated entity, for or on behalf of a client or an affiliate of the regulated entity, would constitute an "other business logo" under proposed subsection (d)(iv). The promotional items bearing such logos, therefore, would be excluded from the $100 limit so long as they meet all of the other terms of proposed section (d) and proposed subsection (d)(iv), including the requirement that the promotional items not give rise to any apparent or actual material conflict of interest.[12] These items would qualify as excluded promotional gifts because they are as unlikely to result in improper influence as items that previously have been excluded (i.e., those items bearing the corporate or other business logo of the regulated entity itself).

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[11] NASD Notice to Members 06-69 (Dec. 2006).

[12] The logo of a 529 college savings plan ("529 plan") for which a dealer is acting as a distributor would likely constitute an "other business logo" under proposed paragraph .03 of the Supplementary Material. For purposes of determining the applicability of proposed amended Rule G-20 and the exclusion from the $100 limit under proposed subsection (d)(iv), the analysis would "look through" to the ultimate recipient of the gift. For example, a state issuer arranges to have a box of 200 tee shirts containing the logo of its 529 advisor-sold plan delivered to the 529 plan's primary distributor. That distributor, in turn, provides the box of tee shirts to a selling firm. Registered representatives of that selling firm then distribute one tee shirt to each of 200 school children. Each gift of a tee shirt would constitute one gift to each school child.

Proposed paragraph .04 of the Supplementary Material regarding personal gifts would state that a number of factors should be considered when determining whether a gift is in relation to the municipal securities or municipal advisory activities of the employer of the recipient. Those factors would include, but would not be limited to, the nature of any pre-existing personal or family relationship between the associated person giving the gift and the recipient and whether the associated person or the regulated entity with which he or she is associated paid for the gift.[13] Proposed paragraph .04 would also state that a gift would be presumed to be given in relation to the municipal securities or municipal advisory activities, as applicable, of the employer of the recipient when a regulated entity bears the cost of a gift, either directly or indirectly by reimbursing an associated person.

(iii) Exclusion for Compensation Paid as a Result of Contracts of Employment or Compensation for Services

Proposed section (f) would extend to municipal advisors the exclusion from the $100 limit in existing Rule G-20(c) for contracts of employment with or compensation for services that are rendered pursuant to a prior written agreement meeting certain content requirements. However, proposed section (f) would clarify that the type of payment that would be excluded from the general limitation of proposed section (c) is "compensation paid as a result of contracts of employment," and not, simply, "contracts of employment" (emphasis added). The MSRB is proposing this amendment to clarify that the exclusion in proposed section (f) from the limitation of proposed section (c) does not apply to the existence or creation of employment contracts. Rather, that exclusion would apply to the compensation paid as a result of certain employment contracts. This amendment is only a clarification and would not alter the requirements currently applicable to dealers.

B. Consolidation and Codification of MSRB and FINRA Interpretive Guidance

As discussed above under "Extension of Rule G-20 to Municipal Advisors and Municipal Advisory Activities and Clarifying Amendments," the proposed amendments would consolidate and codify existing FINRA interpretive guidance previously adopted by the MSRB and incorporate additional relevant FINRA interpretive guidance that has not previously been adopted by the MSRB. The interpretive guidance codified by the proposed amendments would provide that gifts and gratuities that generally would not be

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13 See supra n.11.

subject to the $100 limit would include: transaction-commemorating,[14] de minimis,[15] promotional,[16] bereavement[17] and personal gifts[18] discussed above.

The substance of the statement in the 2007 MSRB Gifts Notice, which provides that certain portions of the NASD Notice to Members 06-69 apply as well to comparable provisions of MSRB Rule G-20, would be codified in the proposed rule change, That portion of the interpretative guidance, accordingly, would be deleted. While FINRA's interpretive guidance regarding bereavement gifts was not formerly adopted by the MSRB, the MSRB believes that this guidance will be appropriate for regulated entities as it would be consistent with the purpose and scope of proposed amended Rule G-20. Further, the MSRB believes that the consolidation and codification of applicable interpretive guidance will foster compliance with the rule as well as create efficiencies for regulated entities and regulatory enforcement agencies.

In addition to the interpretive guidance discussed above, proposed paragraphs .01, .02, and .05 of the Supplementary Material would provide guidance relating to the valuation and the aggregation of gifts and to the applicability of state laws. Proposed paragraph .01 of the Supplementary Material would state that a gift's value should be determined generally according to the higher of its cost or market value. Proposed paragraph .02 of the Supplementary Material would state that regulated entities must aggregate all gifts that are subject to the $100 limit given by the regulated entity and each associated person of the regulated entity to a particular recipient over the course of a year however "year" is selected to be defined by the regulated entity (i.e., calendar year or fiscal year, or rolling basis). Proposed paragraphs .01 and.02 reflect existing FINRA interpretive guidance regarding the aggregation of gifts for purposes of its gift rules, which the MSRB has previously adopted.[19]

Proposed paragraph .05 of the Supplementary Material would remind regulated entities that, in addition to all the requirements of proposed amended Rule G-20, regulated entities may also be subject to other duties, restrictions, or obligations under state or other laws. In addition, proposed paragraph .05 would provide that proposed amended Rule G-20 would not supersede any more restrictive provisions of state or other laws applicable to regulated entities or their associated persons. As applied to many

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14 Proposed subsection (d)(ii), on transaction-commemorative gifts.

15 Proposed subsection (d)(iii), on de minimis gifts.

16 Proposed subsection (d)(iv), on promotional gifts.

17 Proposed subsection (d)(v), on bereavement gifts.

18 Proposed subsection (d)(vi), on personal gifts.

19 NASD Notice to Members 06-69 (Dec. 2006); 2007 MSRB Gifts Notice.

municipal advisors previously unregistered with, and unregulated by, the MSRB and their associated persons, the provision would serve to directly alert or remind municipal advisors that additional laws and regulations may apply in this area.[20]

C. Prohibition of Reimbursement for Entertainment Expenses

Proposed section (e) of Rule G-20 would provide that a regulated entity is prohibited from requesting or obtaining reimbursement for certain entertainment expenses from the proceeds of an offering of municipal securities. This provision would address a matter highlighted by a recent FINRA enforcement action.[21] Specifically, proposed section (e) would provide that a regulated entity that engages in municipal securities or municipal advisory activities for or on behalf of a municipal entity or obligated person in connection with an offering of municipal securities is prohibited from requesting or obtaining reimbursement of its costs and expenses related to the entertainment of any person, including, but not limited to, any official or other personnel of the municipal entity or personnel of the obligated person, from the proceeds of such offering of municipal securities.

Proposed section (e), however, limits what would constitute an entertainment expense. Specifically, the term "entertainment expenses" would exclude "ordinary and reasonable expenses for meals hosted by the regulated entity and directly related to the offering for which the regulated entity was retained." Proposed subsection (e) also would be intended to allow the continuation of the generally accepted market practice of a regulated entity advancing normal travel costs (e.g., reasonable airfare and hotel accommodations) to personnel of a municipal entity or obligated person for business travel related to a municipal securities issuance, such as bond rating trips and obtaining reimbursement for such costs. Some examples of prohibited entertainment expenses that would, for purposes of proposed section (e), be included are tickets to theater, sporting or

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20 The MSRB previously had provided this alert or reminder through interpretative guidance. See 2007 MSRB Gifts Notice (noting that state and local laws also may limit or proscribe activities of the type addressed in this notice).

21 Department of Enforcement v. Gardnyr Michael Capital, Inc. (CRD No. 30520) and Pfilip Gardnyr Hunt, Jr., FINRA Disciplinary Proceeding No. 2011026664301 (Jan. 28, 2014) (concluding that, while the hearing panel did not "endorse the practice of municipal securities firms seeking and obtaining reimbursement for entertainment expenses incurred in bond rating trips," neither the MSRB's rules nor interpretive guidance put the dealer on fair notice that such conduct would be unlawful); see 2007 MSRB Gifts Notice (stating that "dealers should consider carefully whether payments they make in regard to expenses of issuer personnel in the course of the bond issuance process, including in particular but not limited to payments for which dealers seek reimbursement from bond proceeds, comport with the requirements of" Rules G-20 and G-17).

other recreational spectator events, sightseeing tours, and transportation related to attending such entertainment events.

D. Additional Proposed Amendments to Rule G-20

In addition to the previously discussed proposed amendments to Rule G-20, the MSRB also is proposing several amendments to assist readers with their understanding of and compliance with Rule G-20. These proposed amendments include (i) a revised rule title, (ii) a new provision stating the rule's purpose, and (iii) a re-ordering of existing provisions and additional defined terms.

(i) Amendment to Title

To better reflect the content of proposed amended Rule G-20, the title of the rule would be amended to include the phrase "Expenses of Issuance." This amendment would alert readers that the rule addresses expenses that are related to the issuance of municipal securities and that the reader should consult the rule if a question arises regarding such a matter.

(ii) Addition of Purpose Section

Proposed section (a) would set forth the purpose of Rule G-20. It would include a brief synopsis of the rule's scope and function.

(iii) Re-ordering and Definitions of Terms

To assist readers with their understanding of the rule, proposed section (b), at the beginning of the proposed amended rule, would define terms that currently are included in the last section of existing Rule G-20, section (e).

The MSRB is also proposing to include three additional defined terms solely for the purposes of proposed amended Rule G-20: "person," "municipal advisor" and "regulated entity." "Regulated entity" would mean a broker, dealer, municipal securities dealer or municipal advisor, but would exclude the associated persons of such entities. Incorporation of this term into the rule would simplify and shorten the text of proposed amended Rule G-20 as it would replace applicable references within proposed amended Rule G-20 to dealers while also including municipal advisors. The term "municipal advisor" would have the same meaning as in Section 15B(e)(4) of the Exchange Act.[22] The MSRB included that term to clarify that proposed amended Rule G-20 would apply to municipal advisors that are such on the basis of providing advice and also that are such

[22] 15 U.S.C. 78o-4(e)(4).

on the basis of undertaking a solicitation.[23] "Person" would mean a natural person, codifying the MSRB's existing interpretive guidance stating the same.[24]

Proposed Amendments to Rule G-8

Proposed amendments to Rule G-8 would extend to municipal advisors the recordkeeping requirements related to Rule G-20 that currently apply to dealers.[25] Those recordkeeping requirements would be set forth under proposed paragraphs (h)(ii)(A) and (B) of Rule G-8. Municipal advisors would be required to make and retain records of (i) all gifts and gratuities that are subject to the $100 limit and (ii) all agreements of employment or for compensation for services rendered and records of all compensation paid as a result of those agreements. Municipal advisor recordkeeping requirements would be identical to the recordkeeping requirements to which dealers would be subject in proposed amended Rule G-8(a)(xvii)(A) and (B) (discussed below). The MSRB believes that the proposed amendments to Rule G-8 will ensure common standards for municipal advisors and dealers, and will assist in the enforcement of proposed amended Rule G-20 by requiring that regulated entities, including municipal advisors, create and maintain records to document their compliance with proposed amended Rule G-20.

Further, the Board is proposing to amend the rule language contained in Rule G-8(a)(xvii)(A), (B), and (C) applicable to dealers, to reflect the revisions to proposed amended Rule G-20. Specifically, proposed amended paragraph (a)(xvii)(A) would provide that a separate record of any gift or gratuity subject to the general limitation of proposed amended Rule G-20(c) must be made and kept by dealers (emphasis added to amended rule text). The proposed amendments to paragraph (a)(xvii)(A) would track the

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23 Id.

24 See MSRB Interpretive Letter "Person" (Mar. 19, 1980).

25 The MSRB solicited comments regarding possible amendments to Rule G-9 in its Request for Comment on Draft Amendments to MSRB Rule G-20, on Gifts, Gratuities and Non-Cash Compensation, to Extend its Provisions to Municipal Advisors, MSRB Notice 2014-18 (Oct. 23, 2014). However, the MSRB omitted those amendments from this proposed rule change because their substance subsequently was addressed by a separate rulemaking initiative. See Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Consisting of Proposed New Rule G-44, on Supervisory and Compliance Obligations of Municipal Advisors; Proposed Amendments to Rule G-8, on Books and Records to be Made by Brokers, Dealers and Municipal Securities Dealers; and Proposed Amendments to Rule G-9, on Preservation of Records, Exchange Act Release No. 73415 (Oct. 23, 2014), 79 FR 64423 (Oct. 29, 2014) (File No. SR-MSRB-2014-06).

reordering of sections in proposed amended Rule G-20 (replacing the reference to Rule G-20(a) with a reference to Rule G-20(c)) and would provide greater specificity as to the records that a dealer must maintain by referencing the terms used in proposed amended Rule G-20(c). Paragraph (a)(xvii)(B) would be amended to clarify that dealers must make and keep records of all agreements referred to in proposed amended Rule G-20(f) and records of all compensation paid as a result of those agreements (emphasis added to proposed amended rule text). Similar to paragraph (a)(xvii)(A), the proposed amendments to paragraph (a)(xvii)(B) would track the reordering of sections in proposed amended Rule G-20 (replacing the reference to Rule G-20(c) with a reference to proposed amended Rule G-20(f)) and would provide greater specificity as to the types of records that a dealer must maintain by referencing the terms used in proposed amended Rule G-20(f). Paragraph (a)(xvii)(C) also would be amended to track the reordering of sections in proposed amended Rule G-20 (replacing the references to Rule G-20(d) with references to proposed amended Rule G-20(g)).

(b) Statutory Basis

Section 15B(b)(2) of the Exchange Act[26] provides that

> [t]he Board shall propose and adopt rules to effect the purposes of this title with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors.

Section 15B(b)(2)(C) of the Exchange Act[27] provides that the MSRB's rules shall

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

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[26] 15 U.S.C. 78o-4(b)(2).

[27] 15 U.S.C. 78o-4(b)(2)(C).

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2) and Section 15B(b)(2)(C) of the Exchange Act. The proposed rule change would help prevent fraudulent and manipulative practices, promote just and equitable principles of trade and protect investors, municipal entities, obligated persons and the public interest by reducing, or at least exposing, the potential for conflicts of interest in municipal advisory activities by extending the relevant provisions of existing Rule G-20 to municipal advisors and their associated persons. Proposed amended Rule G-20 would help ensure that engagements of municipal advisors, as well as engagements of dealers, are awarded on the basis of merit and not as a result of gifts made to employees controlling the award of such business. By expressly prohibiting the seeking of reimbursement from the proceeds of issuance expenses for the entertainment of any person, including any official or other municipal entity personnel or obligated person personnel, proposed amended Rule G-20 would serve as an effective means of curtailing such practices by providing regulated entities with clear notice and guidance regarding the existing MSRB regulations of such matters. Further, proposed amended Rule G-20 would enhance compliance with Rule G-20 by codifying certain MSRB interpretive guidance and by adopting and codifying certain FINRA interpretive guidance. This codification not only will heighten regulated entity compliance and efficiency (and heighten regulatory enforcement efficiency), but will help prevent inadvertent violations of Rule G-20.

In addition, the proposed amendments to Rule G-8 would assist in the enforcement of Rule G-20 by extending the relevant existing recordkeeping requirements of Rule G-8 that currently are applicable to dealers to municipal advisors. Regulated entities, in a consistent and congruent manner, would be required to create and maintain records of (i) any gifts subject to the $100 limit in proposed amended Rule G-20(c) and (ii) all agreements for services referred to in proposed amended Rule G-20(f), along with the compensation paid as a result of such agreements. The MSRB believes that the requirement that all regulated entities create and retain the documents required by proposed amended Rule G-8 will allow organizations that examine regulated entities to more precisely monitor and promote compliance with the proposed rule change. Increased compliance with the proposed rule change would likely reduce the frequency and magnitude of conflicts of interests that could potentially result in harm to investors, municipal entities, or obligated persons, or undermine the public's confidence in the municipal securities market.

Section 15B(b)(2)(L)(iv) of the Exchange Act[28] requires that rules adopted by the Board:

> not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of

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[28] 15 U.S.C. 78o-4(b)(2)(L)(iv).

> investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud.

The MSRB believes that while the proposed rule change will affect all municipal advisors, it is a necessary regulatory burden because it will curb practices that could harm municipal entities and obligated persons. Specifically, the MSRB believes the proposed rule change will lessen the frequency and severity of violations of the public trust by elected officials and others involved in the issuance of municipal securities that might otherwise have their decisions regarding the awarding of municipal advisory business influenced by the gifts given by regulated entities and their associated persons. While the proposed rule change would burden some small municipal advisors, the MSRB believes that any such burden is outweighed by the need to maintain the integrity of the municipal securities market and to preserve investor and public confidence in the municipal securities market, including the bond issuance process.

The MSRB also believes that the proposed rule change is consistent with Section 15B(b)(2)(G) of the Exchange Act,[29] which provides that the MSRB's rules shall

> prescribe records to be made and kept by municipal securities brokers, municipal securities dealers, and municipal advisors and the periods for which such records shall be preserved.

The proposed rule change would extend the provisions of existing Rule G-8 to require that municipal advisors as well as dealers make and keep records of: gifts given that are subject to the $100 limit; and all agreements referred to in proposed section (f) (on compensation for services) and records of compensation paid as a result of those agreements. The MSRB believes that the proposed amendments to Rule G-8 related to books and records will promote compliance with and facilitate enforcement of proposed amended Rule G-20, other MSRB rules such as Rule G-17, and other applicable securities laws and regulations.

4. Self-Regulatory Organization's Statement on Burden on Competition

Section 15B(b)(2)(C) of the Exchange Act[30] requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, Section 15B(b)(2)(L)(iv) of the Exchange Act provides that MSRB rules may not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for

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29 15 U.S.C. 78o-4(b)(2)(G).

30 15 U.S.C. 78o-4(b)(2)(C).

the protection of investors, municipal entities, and obligated persons provided that there is robust protection of investors against fraud.[31]

In determining whether these standards have been met, the MSRB was guided by the Board's Policy on the Use of Economic Analysis in MSRB Rulemaking.[32] In accordance with this policy, the Board has evaluated the potential impacts on competition of the proposed rule change, including in comparison to reasonable alternative regulatory approaches, relative to the baseline. The MSRB also considered other economic impacts of the proposed rule change and has addressed any comments relevant to these impacts in other sections of this document.

The MSRB does not believe that the proposed rule change will impose any additional burdens on competition, relative to the baseline, that are not necessary or appropriate in furtherance of the purposes of the Exchange Act. To the contrary, the MSRB believes that the proposed rule change is likely to increase competition.

Extending the relevant current restrictions to municipal advisors and their municipal advisory activities will, the MSRB believes, promote merit-based (e.g., the quality of advice, level of expertise and services offered by the municipal advisor) and price-based competition for municipal advisory services and curb or limit the selection or retention of a municipal advisor based on the receipt of gifts. A market in which the participants compete on the basis of price and quality is more likely to represent a "level playing field" for existing providers and encourage the entry of well-qualified new providers. Of particular note is the positive impact the proposed changes are likely to have on dealers that are also municipal advisors that may currently be at a competitive disadvantage vis-à-vis municipal advisors that are not subject to any of the current restrictions of Rule G-20 or the associated requirements of Rule G-8.

The proposed prohibition against the use of offering proceeds to pay certain entertainment expenses, which would apply to all regulated entities, is also, for the reasons stated above, likely to have no negative impact on competition and, to the contrary, may foster greater competition among all regulated entities.

The MSRB considered whether costs associated with the proposed rule change, relative to the baseline, could affect the competitive landscape. The MSRB recognizes that the compliance, supervisory and recordkeeping requirements associated with the proposed rule change may impose costs and that those costs may disproportionately affect municipal advisors that are not also broker-dealers or that have not otherwise

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31 15 U.S.C. 78o-4(b)(2)(L)(iv).

32 Policy on the Use of Economic Analysis in MSRB Rulemaking, available at, http://www.msrb.org/About-MSRB/Financial-and-Other-Information/Financial-Policies/Economic-Analysis-Policy.aspx.

previously been regulated in this area and have not already established compliance programs to comply with the current requirements of Rule G-20 or the associated requirements of Rule G-8 and MSRB Rule G-27. During the comment period, the MSRB sought information that would support quantitative estimates of these costs, but did not receive any relevant data.

For those municipal advisors with no Rule G-20 compliance program or relevant experience, however, the MSRB believes the existing requirements of MSRB Rule G-44 provide a foundation upon which Rule G-20 specific compliance activities can be built and likely significantly reduces the marginal cost of complying with the proposed changes to Rule G-20. To further reduce compliance costs and reduce inadvertent violations of Rule G-20, the MSRB has distilled and incorporated additional interpretive guidance that was not previously included in the draft amendments and clarified specific points. The MSRB believes these refinements will help minimize costs that could affect the competitive landscape and will particularly benefit smaller firms.

Nonetheless, the MSRB recognizes that small municipal advisors and sole proprietors may not employ full-time compliance staff and that the cost of ensuring compliance with the requirements of the proposed rule change may be proportionally higher for these smaller firms, potentially leading to exit from the industry or consolidation. However, as the SEC recognized in its Order Adopting the SEC Final Rule, the market for municipal advisory services is likely to remain competitive despite the potential exit of some municipal advisors (including small entity municipal advisors) or the consolidation of municipal advisors.[33]

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The MSRB received eight comment letters[34] in response to the Request for Comment on the draft amendments to Rules G-20 and G-8. Many commenters expressed

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33 Exchange Act Release No. 70462 (Sept. 20, 2013) 78 FR 67468, 67608 (Nov. 12, 2013).

34 Comments were received in response to the Request for Comment from: An anonymous attorney ("Anonymous"), Bond Dealers of America: Letter from Michael Nicholas, Chief Executive Officer, dated December 8, 2014 ("BDA"); Chris Taylor, dated October 23, 2014 ("Taylor"); FCS Group: Letter from Taree Bollinger, dated October 24, 2014 ("FCS"); Investment Company Institute: Letter from Tamara K. Salmon, Senior Associate Counsel, dated December 5, 2014 ("ICI"); National Association of Municipal Advisors: Letter from Terri Heaton, President, dated December 8, 2014 ("NAMA") (formerly, National Association of Independent Public Finance Advisors); The PFM Group: Letter from Joseph J. Connolly, Counsel, dated November 7, 2014 ("PFM"); and Securities Industry

support for the draft amendments. NAMA welcomed the amendments and their attempt to limit the gaining of influence through the giving of gifts and gratuities. BDA and SIFMA expressed their general support of extending Rule G-20's requirements to municipal advisors as each believed the amendments would promote a level-playing field for the regulation of municipal advisors and dealers acting in the municipal securities and municipal advisory marketplace. Several commenters, however, expressed concerns or suggested changes to the draft amendments. The comment letters are summarized and addressed below by topic.

A. $100 limit

NAMA and PFM expressed concerns that the $100 limit would not adequately apply to gifts given to certain recipients that, in their opinion, should be subject to the $100 limit of proposed amended Rule G-20. Further, NAMA and Anonymous suggested revisions to the amount of the $100 limit.

(i) Application of Proposed Amended Rule G-20(c) to certain recipients

NAMA believed the $100 limit would not apply to gifts given to employees or officials of municipal entities or obligated persons.[35] In NAMA's view, such persons, for the most part, do not engage in "municipal advisory activities" or "municipal securities business" as such business is proposed to be defined in amended MSRB Rule G-37, on political contributions and prohibitions on municipal securities business.

The MSRB has determined not to revise proposed amended Rule G-20(c) in response to NAMA's concerns. Even if employees or officials of municipal entities or obligated persons generally do not engage in "municipal advisory activities," the MSRB has made clear in existing interpretive guidance regarding Rule G-20 that issuer personnel are considered to engage in "municipal securities activities."[36] The language of

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and Financial Markets Association: Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, dated December 8, 2014 ("SIFMA").

35 NAMA stated that the term "municipal securities activities" is not defined by the proposed rule change, but did not provide any explanation of its statement or reason for its statement. The term "municipal securities activities" is a term that is used in existing Rule G-20 and frequently throughout the MSRB Rule Book.

36 See, e.g., 2007 MSRB Gifts Notice (stating that dealers should consider carefully whether payments of expenses they make in regard to expenses of issuer personnel, in the course of the bond issuance process, comport with Rules G-20 and G-17). The MSRB does not suggest that it has relevant regulatory authority over municipal entities or obligated persons; rather, the MSRB can appropriately regulate the conduct of dealers and municipal advisors in the giving of gifts to personnel of municipal entities and obligated persons.

both existing Rule G-20 and proposed amended Rule G-20 applies to gifts given in relation to this broad term, "municipal securities activities," and not the narrower term, "municipal securities business," which was developed for the particular purposes of MSRB Rule G-37.

PFM believed that section (c) of proposed amended Rule G-20 would not apply to gifts given to elected or appointed issuer officials, because the government, in its view, is not their "employer." Existing Rule G-20(a), however, which would be retained as proposed amended Rule G-20(c), broadly defines "employer" to include "a principal for whom the recipient of a payment or service is acting as agent or representative."[37] Thus, for purposes of existing and proposed amended Rule G-20, elected and appointed officials are considered employees of the governmental entity on behalf of which they act as agent or representative.

(ii) Changing the amount of the $100 limit

NAMA and Anonymous submitted comments regarding changing the amount of the $100 limit. NAMA proposed that the $100 limit be raised to $250 per person per year, believing this would strike the appropriate balance of allowing reasonable and customary gift giving while also limiting conflicts of interest, and would align Rule G-20 with MSRB Rule G-37. NAMA stated that, in Rule G-37, the MSRB determined that the contribution level of $250 (without the exceptions in Rule G-20) was sufficient to address the needs of individuals seeking to give political contributions while not allowing those contributions to be so excessive as to allow the contributor to gain undue influence. NAMA proposed that supplementary material be added to state, in effect, that occasional gifts of meals or tickets to theatrical, sporting, and other entertainments that are hosted by the regulated entity would be presumed to be so extensive as to raise a question of propriety if they exceed $250 in any year in conjunction with any gifts provided under Rule G-20(c). NAMA asserted that because the purposes of Rule G-20 and Rule G-37 are united in their attempt to limit a dealer's or a municipal advisor's ability to gain undue

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37 See, e.g., First Fidelity Securities Group, Exchange Act Release No. 36694, Administrative Proceeding File No. 3-8917 (Jan. 9, 1996) (finding violations of Rule G-20 based on payments to financial consultants of issuer, concluding they were "agent[s] or representative[s]" of issuer within the meaning of the rule). See Self-Regulatory Organizations; Order Approving A Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Recordkeeping & Record Retention Requirements Concerning Gifts & Gratuities, Exchange Act Release No. 34372 (July 13, 1994) (File No. SR-MSRB-94-7) ("Rule G–20 is intended to prevent fraud and inappropriate influence in the municipal securities market by limiting the amount of gifts or gratuities from municipal securities dealers to persons not employed by the dealers, including issuer officials and employees of other dealers, in relation to municipal securities activities." (citation omitted)).

influence through the giving of gifts or contributions, that the rules should be written similarly.

Anonymous suggested that the MSRB set a $20 or less per gift limit and lower the $100 limit to $50 per year to level the playing field among all types of municipal advisors and to attain broader compatibility with various federal, state and local regulations regarding gifts. Anonymous further stated that the effective limit to a municipal advisor who also is registered as an investment adviser and subject to the requirements of the Investment Advisers Act of 1940 (the "Advisers Act") (a "municipal advisor/investment adviser"), even in the absence of proposed amended G-20 generally would be zero because, in its view, a municipal advisor/investment adviser is subject to Advisers Act Rule 206(4)-5 (the Advisers Act "pay to play" rule) in its municipal advisory activities.[38] Anonymous stated that Rule 206(4)-5 defines payments as "any gift, subscription, loan, advance, or deposit of money or anything of value," and contains no de minimis exception.

Rule G-37 is designed to address potential political corruption that may result from pay-to-play practices, [39] and as such, is tailored in light constitutional First Amendment concerns. Existing Rule G-20, on the other hand, is designed to address commercial bribery by minimizing the conflicts of interest that arise when a dealer attempts to induce organizations active in the municipal securities market to engage in business with such dealers by means of gifts or gratuities given to employees of such organizations.[40] Rules G-37 and G-20 thus address substantially different regulatory needs in different legal contexts, and the dollar thresholds used in those rules currently differ on that basis. The MSRB believes that the mere purported alignment with Rule G-37 is an insufficient justification for raising the $100 limit.

Further, the parallel that Anonymous draws between proposed amended Rule G-20 and the SEC's regulation of political contributions by certain investment advisors under Advisers Act Rule 206(4)-5 fails to account for the difference in the scope of each regulation. Specifically, Anonymous' interpretation of the regulations fails to recognize the much broader application of proposed amended Rule G-20. Proposed amended Rule G-20 would apply to any gifts given in relation to any of the municipal securities or

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38 17 CFR 275.206(4)-5.

39 Exchange Act Release No. 33868, 59 FR 17621, 17624 (Apr. 13, 1994) (File No. SR-MSRB-1994-02).

Pay-to-play practices typically involve a person making a cash or in-kind political contribution (or soliciting or coordinating with others to make such contributions) in an attempt to influence the selection of the contributor to engage in municipal securities activities or municipal advisory activities.

40 See supra n.5.

municipal advisory activities of the recipient's employer. Advisers Act Rule 206(4)-5, on the other hand, is much narrower in application – it restricts only payments for a solicitation of a government entity for investment advisory services.[41] Also, proposed amended Rule G-20 would explicitly apply to gifts given to many regulated persons (e.g., associated persons of dealers and municipal advisors). By contrast, the complete prohibition Anonymous cites from Advisers Act Rule 206(4)-5 does not apply to payments to defined regulated persons. While it may be appropriate to limit payment for a solicitation to zero unless certain conditions are met, this is not a sufficient rationale to reduce the $100 limit for gifts in proposed amended Rule G-20(c). Adopting Anonymous' recommendation would likely result in an overly and unnecessarily restrictive prohibition that would not allow for appropriate social interactions between regulated entities and their prospective and/or actual business associates. The MSRB, at this time, has determined not to decrease the $100 limit for gifts set forth in proposed amended Rule G-20(c).

B. Gifts Not Subject to the $100 limit

(i) "Normal Business Dealings"

NAMA expressed concern that proposed amended Rule G-20(d), which sets forth the exclusions from the $100 limit, leaves open opportunities for abuse particularly because the associated books and records requirement does not require the maintenance of records of excluded gifts. NAMA expressed concern in particular regarding proposed subsection (d)(i), which would, under certain circumstances, exclude from the $100 limit the giving of occasional meals or tickets to theatrical, sporting or entertainment events. In NAMA's view, regulated entities would be able to engage in otherwise impermissible gift giving under the guise of "normal business dealings," and such gift giving likely would result in the improper influence that Rule G-20 was designed to curtail. NAMA suggested modifying the amended rule to impose an aggregate limit of $250 on all gifts given as part of "normal business dealings," believing the aggregate limit would be consistent with the dollar threshold used in MSRB Rule G-37.

The MSRB, like NAMA, is concerned that the exclusions from the $100 limit not be abused. For this reason, proposed amended Rule G-20 would place important conditions on the several types of excluded gifts, including those in the category of "normal business dealings." All of the gifts described in proposed section (d) would be excluded only if they do not "give rise to any apparent or actual material conflict of interest," and, under proposed section (d)(i), "normal business dealing" gifts would be excluded only if they are not "so frequent or so extensive as to raise any question of propriety." Moreover, dealers and municipal advisors are subject to the fundamental fair-dealing obligations of MSRB Rule G-17. Rule G-17 likely addresses at least some of the concerns raised by NAMA by prohibiting regulated entities from characterizing excessive or lavish expenses for the personal benefit of issuer personnel as an expense of the issue,

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41 17 CFR 275.206(4)-5.

as such behavior could possibly constitute a deceptive, dishonest or unfair practice.[42] The MSRB has determined at this juncture not to further revise proposed amended Rule G-20 because the MSRB believes the proposed rule change adequately addresses the concerns raised by NAMA relating to excluded gifts generally and "normal business dealings" in particular.

(ii) Nominal Value Standard for Promotional Gifts

ICI expressed concern regarding proposed amended Rule G-20(d)(iv), which provides that promotional gifts generally would not be subject to the $100 limit if such gifts are of nominal value, i.e., "substantially below the general $100 limit." ICI stated that this standard is too vague, would be difficult to comply with, and that the resulting ambiguity would permit the MSRB to second guess a regulated entity's good faith effort to comply with the rule. ICI stated that deleting the phrase would better align Rule G-20 with FINRA's comparable non-cash compensation rule for investment company securities, and would facilitate registrants' compliance with such rules.

Since 2007, the MSRB has used the "substantially below the general $100 limit" standard by way of its interpretive guidance, which incorporates FINRA guidance to the same effect under the FINRA gift and non-cash compensation rules.[43] The MSRB believes that it is appropriate at this time to retain this standard for determining whether a promotional gift is of nominal value because, among other reasons, the current standard is harmonized with more analogous FINRA regulation, ICI's concern about consequences from perceived vagueness is speculative, and a bright-line limit could distort behavior resulting in increased gift giving at or near any bright-line limit.

(iii) Gifts of Promotional Items and "Other Business Logos"

ICI requested clarification regarding the application of proposed amended Rule G-20 to promotional gifts that display the brand or logo of the product for which the regulated entity is acting as a distributor, such as a 529 college savings plan, and not the brand or logo of the regulated entity itself. ICI stated its belief that Rule G-20 would not appear to be triggered when a regulated entity utilizes promotional gifts that display the logo of a client or product of a regulated entity, such as a logo for a 529 college savings plan, because such gifts do not promote that regulated entity's brand or logo. ICI recommended that the MSRB clarify that proposed amended Rule G-20(c) does not apply

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42 See 2007 MSRB Gifts Notice (stating that a dealer should be aware that characterizing excessive or lavish expenses for the personal benefit of issuer personnel as an expense of the issue, may, depending on all the facts and circumstances, constitute a deceptive, dishonest, or unfair practice in violation of Rule G-17).

43 FINRA Rules 3220 and 2320; NASD Rule 2820.

at all in such instances, and that the regulated entity therefore need not rely on an exclusion for the giving of such promotional gifts.

The restrictions of proposed Rule G-20 are not, as suggested by ICI, triggered because a gift given by a regulated entity or its associated person promotes that regulated entity's brand or logo. Rather, proposed amended Rule G-20 has potential application to the giving of "any thing or service of value" in relation to the recipient's employer's municipal securities or municipal advisory activities (emphasis added). The proposed amended rule provides for exclusions of certain gifts, including the exclusion for promotional gifts "displaying the regulated entity's corporate or other business logo." As such, if the gift items described by ICI meet all of the requirements to qualify for an exclusion as described in proposed section (d) and proposed subsection (d)(iv), then the restrictions of proposed amended Rule G-20(c) would not apply. Proposed paragraph .03 to the Supplementary Material would provide this guidance regarding promotional gifts, and due to the apparent misapprehension of the scope of the rule in the commentary, would clarify that such gifts are potentially subject to the $100 limit of proposed amended section (c).

C. Incorporation of Applicable FINRA Interpretive Guidance

NAMA commented that the MSRB should codify all applicable FINRA guidance on gifts and gratuities into the rule language of Rule G-20. NAMA noted that many municipal advisors are not FINRA members and stated that regulated entities (particularly non-FINRA members) should not be expected to review FINRA interpretive guidance to fully understand their obligations under Rule G-20.

The MSRB generally agrees with NAMA. In addition, the MSRB recognizes that some municipal advisors may be establishing compliance programs to comply with MSRB rules for the first time. The MSRB further believes that it will be more efficient for all regulated entities and regulatory enforcement agencies if additional applicable FINRA interpretive guidance is codified in proposed amended Rule G-20. As such, the MSRB has distilled and included in proposed amended Rule G-20 the substance of additional portions of the interpretive guidance contained in NASD Notice to Members 06-69 addressing the valuation and aggregation of gifts. As previously noted, proposed paragraph .01 of the Supplementary Material would state that a gift's value should be determined by regulated entities generally according to the higher of cost or market value. Proposed paragraph .02 of the Supplementary Material would state that regulated entities must aggregate all gifts that are subject to the $100 limit given by the regulated entity and each associated person of the regulated entity to a particular recipient over the course of a year.

D. Alignment with FINRA Rules

ICI commented that it is supportive of the MSRB's rulemaking effort to align, when appropriate, MSRB rules with congruent FINRA rules, and that the comments ICI submitted were intended to foster additional alignment with FINRA rules. In particular,

ICI stated that the MSRB should consider how it might better align Rule G-20 with FINRA's comparable rules, including NASD Rule 2830(l)(5) since that rule was not addressed in the MSRB's Request for Comment. In addition, ICI suggested that the MSRB should monitor FINRA's retrospective review relating to gifts, gratuities and non-cash compensation and consider making conforming amendments to its rules to keep in line with any amendments that FINRA might adopt.

As part of the MSRB's rulemaking process, the MSRB considers the appropriateness and implications of harmonization between MSRB and FINRA rules that address similar subject matters. The MSRB believes that such harmonization, when practicable, can facilitate compliance and reduce the cost of compliance for regulated entities.

As discussed above, the MSRB has consolidated and proposed to codify a significant portion of FINRA's interpretive guidance set forth in NASD Notice to Members 06-69 on gifts and gratuities in proposed amended Rule G-20. In addition, portions of proposed amended Rule G-20 and existing Rule G-20 are substantially similar to other applicable NASD and FINRA rules, including NASD Rule 2830(l)(5), Investment Company Securities, and FINRA Rule 2320(g)(4), Variable Contracts of an Insurance Company. With regard to FINRA's retrospective review of its gifts, gratuities and non-cash compensation rules, the MSRB has monitored from the beginning of this rulemaking initiative, and continues to monitor, FINRA's activities in this area, and may consider further potential harmonization if FINRA proposes or adopts any amendments to its relevant rules.

E. Entertainment Expenses and Bond Proceeds

(i) Definition of Entertainment Expenses

BDA, NAMA, SIFMA, and Anonymous requested clarification regarding the expenses that would be subject to the prohibition in proposed amended Rule G-20(e). BDA requested that the MSRB clarify "entertainment expenses" versus expenses for "normal and necessary meals" and "normal travel costs." BDA also suggested that the MSRB treat a regulated entity's meals with clients that are generally part of travel separately from items like tickets to sporting or theatrical events, which BDA believed was clearly entertainment. BDA requested that, if the MSRB were to not amend proposed amended Rule G-20(e) itself, that the MSRB should provide interpretive guidance to clarify the issue.

NAMA commented that the entertainment expense reimbursement prohibition was appropriate and suitably tailored. Nevertheless, NAMA believed that it would be clearer if entertainment expenses were defined as "necessary expenses for meals that comply with the expense guidelines of the municipal entity for their personnel (any amounts in excess would not be reimbursable and subject to limitation)."

SIFMA commented that "entertainment expenses" should not include expenses "reasonably related to a legitimate business purpose." SIFMA stated that such a revision to the draft rule language would improve the clarity of the rule and would aid in compliance with the rule. Further, SIFMA suggested that the entertainment expense provision might be clearer if the provision stated that meals that are "a fair and reasonable amount, indexed to inflation, such as not to exceed $100 per person" are not, for purposes of the provision, entertainment expenses and therefore not subject to the prohibition.

Anonymous suggested that the MSRB modify proposed section (e) to clarify that the prohibition is not intended to unnecessarily restrict how a regulated entity may appropriately use the fees it earns from its clients when the fees are paid from the proceeds of an offering of municipal securities.

After careful consideration of these comments, the MSRB has included a clarification in the proposed entertainment expense provision to conform proposed amended Rule G-20(e) to a standard used in tax law for analogous purposes. That tax law standard is used to identify a legitimate connection to business activity and avoid excess expenses in relation to that activity. The modification replaces the phrase "reasonable and necessary expenses for meals" with "ordinary and reasonable expenses for meals" (emphasis added) hosted by the regulated entity and directly related to the offering for which the regulated entity was retained. Beyond this modification, the MSRB believes that the proposed entertainment expense provision, including with respect to its scope, is sufficiently clear. The MSRB believes that the inclusion of a discrete dollar limit or other more prescriptive language as suggested by some commenters would result in an overly inflexible rule. Further, the MSRB believes that making the scope of the prohibition turn on the existence and parameters of client entertainment and gift policies, as suggested by NAMA, would result in a lack of uniformity and potential confusion among market participants.

(ii) Other Comments Regarding Entertainment Expenses and Bond Proceeds

SIFMA stated that it agreed with the intent of the prohibition of seeking or obtaining reimbursement for entertainment expenses from the proceeds of an issuance of municipal securities. Nonetheless, SIFMA commented that it was concerned: (i) about the "function and interpretation of the prohibition;" (ii) that the entertainment expense provision would prohibit a practice which is currently not prohibited by MSRB rules;[44] (iii) that regulated entities should be able to accommodate clients that would like entertainment expenses to be paid for and reimbursed to the dealer out of the proceeds of

[44] SIFMA stated that it understood that such practices may be permitted or prohibited depending on state or local laws.

the offering;[45] and (iv) that the provision augurs "federal regulatory creep" over state and local issuers, which would "become another area where regulators will hold dealers responsible indirectly for state and local issuer behavior that they cannot regulate directly." Anonymous stated that it believed the entertainment prohibition provision would prohibit an investment adviser registered under the Advisers Act ("RIA") employed by firms that also employ municipal advisors from obtaining reimbursement for appropriate business expenses (such as an RIA taking a commercial client of their investment advisory business out to lunch to discuss business) because it construed the firm's funds (which were earned municipal advisory fees paid to the firm from bond proceeds) as retaining their character as "bond proceeds."

Proposed amended Rule G-20(e) would address a concern of the MSRB that reimbursement of certain expenses from bond proceeds may violate MSRB rules, including Rules G-20 and G-17.[46] The MSRB has provided guidance that obtaining reimbursement for expenses from bond proceeds, even "if thought to be a common industry practice" may raise a question under applicable MSRB rules depending on "the character, nature and extent of expenses paid by dealers or reimbursed as an expense of the issue."[47] The MSRB believes that proposed amended Rule G-20(e) will promote just and equitable principles of trade.

Further, the proposed reimbursement prohibition is explicitly limited in its application to the conduct of dealers and municipal advisors. It would not prohibit a municipal entity from using bond proceeds to pay for entertainment costs, though other laws or regulations outside of MSRB rules may apply. The proposed prohibition also would not preclude dealers and municipal advisors from providing business entertainment – i.e., items or services of value – that is within the scope of "normal business dealing," which would include, for example, meals or tickets to theatrical, sporting or other entertainments, subject to the conditions of proposed amended Rule G-20(d)(i) (the provision on normal business dealings).

Accordingly, the MSRB has determined not to revise proposed amended Rule G-20, at this time, in response to the comments from SIFMA or Anonymous relating to the entertainment expense reimbursement prohibition.

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45 The MSRB believes that SIFMA's recommendation would circumvent the purpose of the proposed entertainment expense provision because it would allow dealers to seek or obtain reimbursement for entertainment expenses from an issuer by including such expenses in the underwriter's discount. The MSRB believes that SIFMA's suggested change would be contrary to the intent of the proposed entertainment expense provision.

46 See supra n. 21.

47 Id.

F. Application of Non-Cash Compensation Provisions to Municipal Advisors

In response to the Request for Comment, NAMA commented that the provisions of draft amended section (g), which would have extended the non-cash compensation provisions in connection with primary offerings that currently apply to dealers to municipal advisors and their associated persons, appeared to be inapplicable to non-dealer municipal advisors. Anonymous supported the extension of such provisions to municipal advisors.

After carefully considering the comments, the MSRB believes, at this juncture, that extending the requirements of proposed section (g) to a municipal advisor and any associated person thereof is not necessary. However, the MSRB intends to monitor the activities of municipal advisors in relation to its rules, and may revisit this matter at a future date.

G. Potential Regulatory Alternatives

Anonymous suggested that the MSRB consider two alternatives to proposed amended Rule G-20. According to Anonymous, to ensure that municipal advisors/investment advisers are not unduly disadvantaged by the ability of non-RIAs to give gifts, the MSRB should incorporate Advisers Act Rule 206(4)-5 into Rule G-20 and clarify that Rule 206(4)-5 also applies to municipal advisory activities of any MSRB-regulated entity. Anonymous believed that because Rule 206(4)-5 already applies to municipal advisors/investment advisers, the incorporation of that rule into Rule G-20 would reduce duplicative rulemaking and would increase regulatory certainty. Alternatively, Anonymous suggested that the MSRB recommend to the SEC that it adjust Rule 206(4)-5 to be more compatible with proposed amended Rule G-20 as to the municipal advisory activities of municipal advisors/investment advisers.

The MSRB believes that Anonymous's concerns are addressed by other MSRB rules or rule provisions that the MSRB has already proposed. Advisers Act Rule 206(4)-5 prohibits an investment adviser from providing or agreeing to provide, directly or indirectly, payments to solicit a government entity for investment advisory services unless such person is a defined regulated person. MSRB Rule G-38, solicitation of municipal securities business, flatly prohibits a dealer, directly or indirectly, from paying any person who is not an affiliated person of the dealer for a solicitation of municipal securities business on behalf of such dealer. In addition, proposed MSRB Rule G-42, on duties of non-solicitor advisors, currently pending with the SEC for approval or disapproval, would generally prohibit payments for solicitations with certain limited exceptions that would include allowing payments that constitute "normal business dealings" as defined in Rule G-20, reasonable fees paid to another registered municipal adviser, and payments to an affiliate. The MSRB therefore believes that it is unnecessary to incorporate Advisers Act Rule 206(4)-5 into Rule G-20 to address Anonymous's concerns.

H. Recordkeeping Requirements

(i) Recordkeeping for Certain Gifts not Subject to $100 limit

NAMA commented that a regulated entity should be required to maintain records for gifts that are subject to either the normal business dealing exclusion under proposed amended Rule G-20(d)(i) or the personal gift exclusion under proposed amended Rule G-20(d)(vi). NAMA noted that gifts that constitute normal business dealings within proposed amended Rule G-20(d)(i) require recordkeeping to comply with certain requirements of the Internal Revenue Service and of various municipalities, such as in California. Therefore, according to NAMA, imposing a recordkeeping requirement would not be an entirely new burden, would provide protection against pay-to-play activities and would provide a means to determine whether such gifts give rise to questions of impropriety or conflicts of interest. NAMA also commented that, to afford meaningful enforcement, the MSRB should require a regulated entity to keep records of any personal gifts given pursuant to proposed amended Rule G-20(d)(iv) that were paid for, directly or indirectly, by the regulated entity.

After carefully considering the comments, the MSRB continues to believe that the recordkeeping requirements of Rule G-8(h) that relate to Rule G-20 should be limited to items that are subject to the $100 limit. The MSRB believes this approach to recordkeeping under Rule G-20 will continue to harmonize with existing FINRA recordkeeping requirements for dealers. Moreover, significant safeguards that are provided by other MSRB rules, including Rules G-27, G-44, and G-17, weigh against imposing the additional recordkeeping burdens on regulated entities suggested by NAMA. As the MSRB reminded dealers in its 2007 MSRB Gifts Notice on Rule G-20, dealers are required to have supervisory policies and procedures in place under Rule G-27 that are reasonably designed to prevent and detect violations of Rule G-20 (and of other applicable securities laws).[48] Recently adopted Rule G-44, on supervision and compliance obligations of municipal advisors, imposes similar supervisory requirements on municipal advisors. Further, and also as the MSRB reminded dealers in 2007 in particular contexts, the making of payments that might not otherwise be subject to Rule G-20 could constitute separate violations of Rule G-17, which currently applies to municipal advisors and dealers.[49]

(ii) Recordkeeping of Services Agreements

PFM objected to the draft amendment to Rule G-8(h)(ii)(B) that would require municipal advisors to keep all agreements referred to in draft amended G-20(f), on compensation for services. PFM stated that this requirement would be a substantial and

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[48] 2007 MSRB Gifts Notice.

[49] Id.

unjustified burden on municipal advisors due to the large number of transactions for which, it believed, they would need to maintain records. Furthermore, PFM believed that the MSRB does not have statutory authority to require recordkeeping of contracts for services of a non-securities related nature and stated that it believed that Rule G-8(h)(ii)(B) would require such recordkeeping. PFM suggested that draft amended Rule G-8(h)(ii)(B) be revised to limit the required agreements to those "relied upon by the registrant pursuant to Rule G-20(c)" rather than those "referred to in Rule G-20(f)." FCS requested clarification as to whether Rule G-8(h)(ii)(B) would require a municipal advisor to keep a record of every contract the municipal advisor enters into "for municipal advisory services whether or not any gifts [were] given."

The comments from PFM and FCS appear to be predicated on a misunderstanding of the types of agreements that are referred to in proposed section (f). The proposed section provides that the $100 limit does not apply to compensation for services that are rendered pursuant to a prior written agreement meeting certain content requirements. Thus, the agreements referred to in proposed section (f) are those under which compensation would otherwise be subject to the $100 limit (i.e., compensation in relation to the municipal securities or municipal advisory activities of the employer of the recipient). As such, agreements of a non-securities related nature, about which PFM expressed concern, would not be required to be kept by proposed amended Rule G-8(h)(ii)(B).

(iii) Recordkeeping by Registered Investment Advisers

Anonymous commented that it believed that while the draft recordkeeping requirements were relevant, such requirements were unnecessary for municipal advisors/investment advisers because, according to Anonymous, RIAs are required to keep such records under the Advisers Act Rule 206(4)-3.[50] Anonymous suggested that the MSRB consider exempting municipal advisors/investment advisers from the recordkeeping requirements associated with Rule G-20.

To help ensure a level playing field as well as to enhance compliance and enforcement, the MSRB believes that all regulated entities, including municipal advisors/investment advisers, should be subject to substantially identical recordkeeping requirements associated with Rule G-20. Therefore, regardless of whether a regulated entity also may be subject to a comparable requirement under other federal securities laws, that regulated entity would be required to comply with Rule G-20's associated recordkeeping requirements.

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50 17 CFR 275.206(4)-3.

6. Extension of Time Period for Commission Action

The MSRB declines to consent to an extension of the time period specified in Section 19(b)(2) or Section 19(b)(7)(D) of the Exchange Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1	Completed Notice of Proposed Rule Change for Publication in the Federal Register
Exhibit 2	Notice Requesting Comment and Comment Letters
Exhibit 5	Text of Proposed Rule Change

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-_____; File No. SR-MSRB-2015-09)

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change Consisting of Proposed Amendments to Rule G-20, on Gifts, Gratuities and Non-Cash Compensation, and Rule G-8, on Books and Records to be Made by Brokers, Dealers, Municipal Securities Dealers, and Municipal Advisors, and the Deletion of Prior Interpretive Guidance

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on the Municipal Securities Rulemaking Board (the "MSRB" or "Board") filed with the Securities and Exchange Commission (the "SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB filed with the Commission a proposed rule change consisting of proposed amendments to Rule G-20 (with amendments, "proposed amended Rule G-20"), on gifts, gratuities and non-cash compensation, proposed amendments to Rule G-8, on books and records to be made by brokers, dealers, municipal securities dealers, and municipal advisors, and the deletion of prior interpretive guidance that would be codified by proposed amended Rule G-20 (the "proposed rule change"). The MSRB requested that the proposed rule change be approved with an implementation date six months after the Commission approval date for all changes.

The text of the proposed rule change is available on the MSRB's website at

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1 15 U.S.C. 78s(b)(i).

2 17 CFR 240.19b-4.

www.msrb.org/Rules-and-Interpretations/SEC-Filings/2015-Filings.aspx, at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Following the financial crisis of 2008, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").[3] The Dodd-Frank Act amended Section 15B of the Exchange Act to establish a new federal regulatory regime requiring municipal advisors to register with the Commission, deeming them to owe a fiduciary duty to their municipal entity clients and granting the MSRB rulemaking authority over them. The MSRB, in the exercise of that rulemaking authority, has been developing a comprehensive regulatory framework for municipal advisors and their associated persons.[4] Important elements of that regulatory framework are the proposed amendments to Rules G-20[5]and G-8.

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3 Pub. Law No. 111-203, 124 Stat. 1376 (2010).

4 MSRB Rule D-11 defines "associated persons" as follows:

> Unless the context otherwise requires or a rule of the Board otherwise specifically provides, the terms "broker," "dealer," "municipal securities broker," "municipal securities dealer," "bank dealer," and "municipal advisor" shall refer to and

The proposed rule change would further the purposes of the Exchange Act, as amended by the Dodd-Frank Act, by addressing improprieties and conflicts that may arise when municipal advisors and/or their associated persons give gifts or gratuities to employees who may influence the award of municipal advisory business. Extending the policies embodied in existing Rule G-20 to municipal advisors through proposed amended Rule G-20 would ensure common standards for brokers, dealers, and municipal securities dealers ("dealers") and municipal advisors (dealers, together with municipal advisors, "regulated entities") that all operate in the municipal securities market.[6]

Proposed Amended Rule G-20

In summary, the proposed amendments to Rule G-20 would:

- Extend the relevant existing provisions of the rule to municipal advisors and their associated persons and to gifts given in relation to municipal advisory activities;

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include their respective associated persons. Unless otherwise specified, persons whose functions are solely clerical or ministerial shall not be considered associated persons for purposes of the Board's rules.

5 Existing Rule G-20 is designed, in part, to minimize the conflicts of interest that arise when a dealer attempts to induce organizations active in the municipal securities market to engage in business with such dealers by means of personal gifts or gratuities given to employees of such organizations. Rule G-20 helps to ensure that a dealer's municipal securities activities are undertaken in arm's length, merit-based transactions in which conflicts of interest are minimized. See MSRB Notice 2004-17 (Jun. 15, 2004).

6 MSRB Rule G-17 is the MSRB's fundamental fair-dealing rule. It provides that a dealer or municipal advisor, in the conduct of its municipal securities activities or municipal advisory activities, shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice. As frequently previously stated, Rule G-17 may apply regardless of whether Rule G-20 or any other MSRB rule also may be applicable to a particular set of facts and circumstances. See, e.g., Interpretative Notice Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities (Aug. 2, 2012) (reminding underwriters of the application of Rule G-20, in addition to their obligations under Rule G-17).

- Consolidate and codify interpretive guidance, including interpretive guidance published by the Financial Industry Regulatory Authority, Inc. ("FINRA") and adopted by the MSRB, to ease the compliance burden on regulated entities that must understand and comply with these obligations, and delete prior interpretive guidance that would be codified by proposed amended Rule G-20; and
- Add a new provision to prohibit the seeking or obtaining of reimbursement by a regulated entity of certain entertainment expenses from the proceeds of an offering of municipal securities.

Further, proposed amended Rule G-20 would include several revisions that are designed to assist regulated entities and their associated persons with their understanding of and compliance with the rule. Those revisions include the definition of additional key terms and the addition of a paragraph that sets forth the purpose of the rule. Proposed amended Rule G-20 is discussed below.

A. Extension of Rule G-20 to Municipal Advisors and Municipal Advisory Activities and Clarifying Amendments

Proposed amended Rule G-20 would extend to municipal advisors and their associated persons: (i) the general dealer prohibition of gifts or gratuities in excess of $100 per person per year in relation to the municipal securities activities of the recipient's employer (the "$100 limit"); (ii) the exclusions contained in the existing rule from that general prohibition (including certain consolidations and the codifications of prior interpretive guidance) and the addition of bereavement gifts to those exclusions; and (iii) the existing exclusion relating to contracts of employment or compensation for services. Proposed section (g), on non-cash compensation in

connection with primary offerings, would not be extended to municipal advisors or to associated persons thereof.

(i) General prohibition of gifts or gratuities in excess of $100 per year

Proposed section (c) (based on section (a) of existing Rule G-20) would extend to a municipal advisor and its associated persons the provision that currently prohibits a dealer and its associated persons, in certain circumstances, from giving directly or indirectly any thing or service of value, including gratuities ("gifts"), in excess of $100 per year to a person (other than an employee of the dealer). As proposed, the prohibited payments or services by a dealer or municipal advisor or associated persons would be those provided in relation to the municipal securities activities or municipal advisory activities of the employer of the recipient (other than an employee of the regulated entity).

(ii) Exclusions from the $100 limit

Proposed section (d) (based on section (b) of existing Rule G-20) would extend to a municipal advisor and its associated persons the provision that excludes certain gifts from the $100 limit of proposed section (c) as long as the conditions articulated by proposed section (d) and the relevant subsection, as applicable, are met. Proposed section (d) also would state that gifts, in order to be excluded from the $100 limit, must not give rise to any apparent or actual material conflict of interest.

Proposed section (d) would include proposed subsections (d)(i) through (d)(iv) and (d)(vi) that would consolidate and codify interpretive guidance that the MSRB provided in MSRB Notice 2007-06 (the "2007 MSRB Gifts Notice").[7] That notice encouraged dealers to adhere to the highest ethical standards and reminded dealers that Rule G-20 was designed to

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[7] See Dealer Payments in Connection with the Municipal Issuance Process, MSRB Notice 2007-06 (Jan. 29, 2007).

"avoid conflicts of interest."[8] The 2007 MSRB Gifts Notice's interpretive guidance also included FINRA guidance that the MSRB had adopted by reference.[9] Further, proposed subsection (d)(v) would codify FINRA interpretive guidance relating to bereavement gifts that the MSRB previously had not adopted.[10] The MSRB believes that these proposed codifications will (i) enhance the understanding of the interpretive guidance applicable to the exclusions, (ii) foster compliance with the rule, and (iii) enhance efficiencies for regulated entities and regulatory enforcement agencies. A more detailed discussion of the subsections to proposed section (d) is provided below.

Proposed subsection (d)(i) would exclude, as is currently the case for dealers under existing Rule G-20, a gift of meals or tickets to theatrical, sporting, and other entertainment given by a regulated entity or its associated persons from the $100 limit if they are a "normal business dealing." The regulated entity or its associated persons would be required to host the gifted event, as is currently the case for dealers. If the regulated entity or its associated persons were to fail to host gifts of these types, then those gifts would be subject to the $100 limit. In

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8 Id.

9 See 2007 MSRB Gifts Notice (reminding dealers of the application of Rule G-20 and Rule G-17 in connection with certain payments made and expenses reimbursed during the municipal bond issuance process, and stating that the National Association of Securities Dealers, Inc.'s ("NASD") guidance provided in NASD Notice to Members 06-69 (Dec. 2006) to assist dealers in complying with NASD Rule 3060 applies as well to comparable provisions of Rule G-20).

10 See FINRA Letter to Amal Aly, SIFMA (Reasonable and Customary Bereavement Gifts), dated December 17, 2007 (stating that FINRA staff agrees that reasonable and customary bereavement gifts (e.g., appropriate flowers, food platter for the mourners, perishable items intended to comfort the recipient or recipient's family) are not "in relation to the business of the employer of the recipient" under FINRA Rule 3060, but that bereavement gifts beyond what is reasonable and customary would be deemed to be gifts in relation to the business of the employer of the recipient and subject to the $100 limit of Rule 3060) ("FINRA bereavement gift guidance").

addition, the regulated entity would be excluded from the $100 limit if it were to sponsor legitimate business functions that are recognized by the Internal Revenue Service as deductible business expenses. Finally, municipal advisors and their associated persons would be held to the same standard as dealers, in that gifts would not qualify as "normal business dealings" if they were "so frequent or so extensive as to raise any question of propriety."

Proposed subsections (d)(ii) through (iv) would establish three categories of gifts that previously were excluded from the $100 limit under the category of "reminder advertising" in the rule language regarding "normal business dealings" in existing section (b) of Rule G-20. The MSRB believes that these more specific categories in the proposed new subsections will assist regulated entities with their compliance obligations by providing additional guidance on the types of gifts that constitute reminder advertising under the existing rule. Those more specific categories are:

- gifts commemorative of a business transaction, such as a desk ornament or Lucite tombstone (proposed subsection (d)(ii));
- de minimis gifts, such as pens and notepads (proposed subsection (d)(iii)); and
- promotional gifts of nominal value that bear an entity's corporate or other business logo and that are substantially below the $100 limit (proposed subsection (d)(iv)).

Proposed subsection (d)(v) would exclude bereavement gifts from the $100 limit. That proposed subsection would consolidate and codify the FINRA bereavement gift guidance currently applicable to dealers that exempts customary and reasonable bereavement gifts from the $100 limit. Under proposed subsection (d)(v), the bereavement gift would be required to be reasonable and customary for the circumstances.

Finally, proposed subsection (d)(vi) would exclude personal gifts given upon the occurrence of infrequent life events, such as a wedding gift or a congratulatory gift for the birth of a child. Similar to proposed subsection (d)(v), proposed subsection (d)(vi) would consolidate and codify the FINRA personal gift guidance currently applicable to dealers. That guidance exempts personal gifts that are not "in relation to the business of the employer of the recipient"[11] from the $100 limit. Proposed paragraph .04 of the Supplementary Material, discussed below, would provide guidance as to types of personal gifts that generally would not be subject to the $100 limit.

With regard to proposed subsections (d)(ii) through (vi), the "frequency" and "extensiveness" limitations applicable to proposed subsection (d)(i) would not apply. The MSRB is proposing to modify those limitations to better reflect the characteristics of the gifts described in proposed subsections (d)(ii) through (vi). Gifts described in those subsections would be gifts that are not subject to the $100 limit, and, typically would not give rise to a conflict of interest that Rule G-20 was designed to address. Transaction-commemorative gifts, de minimis gifts, promotional gifts, bereavement gifts, and personal gifts, as described in the proposed rule change, by their nature, are given infrequently and/or are of such nominal value that retaining the requirement that such gifts be "not so frequent or extensive" would be unnecessarily duplicative of the description of these gifts and could result in confusion.

To assist regulated entities with their understanding of the rule's exclusions and with their compliance with the rule, the proposed rule change would provide guidance regarding promotional gifts and "other business logos" (proposed paragraph .03 of the Supplementary Material) and personal gifts (proposed paragraph .04 of the Supplementary Material).

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[11] NASD Notice to Members 06-69 (Dec. 2006).

Specifically, proposed paragraph .03 would clarify that the logos of a product or service being offered by a regulated entity, for or on behalf of a client or an affiliate of the regulated entity, would constitute an "other business logo" under proposed subsection (d)(iv). The promotional items bearing such logos, therefore, would be excluded from the $100 limit so long as they meet all of the other terms of proposed section (d) and proposed subsection (d)(iv), including the requirement that the promotional items not give rise to any apparent or actual material conflict of interest.[12] These items would qualify as excluded promotional gifts because they are as unlikely to result in improper influence as items that previously have been excluded (i.e., those items bearing the corporate or other business logo of the regulated entity itself).

Proposed paragraph .04 of the Supplementary Material regarding personal gifts would state that a number of factors should be considered when determining whether a gift is in relation to the municipal securities or municipal advisory activities of the employer of the recipient. Those factors would include, but would not be limited to, the nature of any pre-existing personal or family relationship between the associated person giving the gift and the recipient and whether the associated person or the regulated entity with which he or she is associated paid for the gift.[13] Proposed paragraph .04 would also state that a gift would be presumed to be given in relation to the municipal securities or municipal advisory activities, as applicable, of the employer of the

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12 The logo of a 529 college savings plan ("529 plan") for which a dealer is acting as a distributor would likely constitute an "other business logo" under proposed paragraph .03 of the Supplementary Material. For purposes of determining the applicability of proposed amended Rule G-20 and the exclusion from the $100 limit under proposed subsection (d)(iv), the analysis would "look through" to the ultimate recipient of the gift. For example, a state issuer arranges to have a box of 200 tee shirts containing the logo of its 529 advisor-sold plan delivered to the 529 plan's primary distributor. That distributor, in turn, provides the box of tee shirts to a selling firm. Registered representatives of that selling firm then distribute one tee shirt to each of 200 school children. Each gift of a tee shirt would constitute one gift to each school child.

13 See supra n.11.

recipient when a regulated entity bears the cost of a gift, either directly or indirectly by reimbursing an associated person.

(iii) Exclusion for Compensation Paid as a Result of Contracts of Employment or Compensation for Services

Proposed section (f) would extend to municipal advisors the exclusion from the $100 limit in existing Rule G-20(c) for contracts of employment with or compensation for services that are rendered pursuant to a prior written agreement meeting certain content requirements. However, proposed section (f) would clarify that the type of payment that would be excluded from the general limitation of proposed section (c) is "compensation paid as a result of contracts of employment," and not, simply, "contracts of employment" (emphasis added). The MSRB is proposing this amendment to clarify that the exclusion in proposed section (f) from the limitation of proposed section (c) does not apply to the existence or creation of employment contracts. Rather, that exclusion would apply to the compensation paid as a result of certain employment contracts. This amendment is only a clarification and would not alter the requirements currently applicable to dealers.

B. Consolidation and Codification of MSRB and FINRA Interpretive Guidance

As discussed above under "Extension of Rule G-20 to Municipal Advisors and Municipal Advisory Activities and Clarifying Amendments," the proposed amendments would consolidate and codify existing FINRA interpretive guidance previously adopted by the MSRB and incorporate additional relevant FINRA interpretive guidance that has not previously been adopted by the MSRB. The interpretive guidance codified by the proposed amendments would provide that gifts and gratuities that generally would not be subject to the $100 limit would

include: transaction-commemorating,[14] de minimis,[15] promotional,[16] bereavement[17] and personal gifts[18] discussed above.

The substance of the statement in the 2007 MSRB Gifts Notice, which provides that certain portions of the NASD Notice to Members 06-69 apply as well to comparable provisions of MSRB Rule G-20, would be codified in the proposed rule change, That portion of the interpretative guidance, accordingly, would be deleted. While FINRA's interpretive guidance regarding bereavement gifts was not formerly adopted by the MSRB, the MSRB believes that this guidance will be appropriate for regulated entities as it would be consistent with the purpose and scope of proposed amended Rule G-20. Further, the MSRB believes that the consolidation and codification of applicable interpretive guidance will foster compliance with the rule as well as create efficiencies for regulated entities and regulatory enforcement agencies.

In addition to the interpretive guidance discussed above, proposed paragraphs .01, .02, and .05 of the Supplementary Material would provide guidance relating to the valuation and the aggregation of gifts and to the applicability of state laws. Proposed paragraph .01 of the Supplementary Material would state that a gift's value should be determined generally according to the higher of its cost or market value. Proposed paragraph .02 of the Supplementary Material would state that regulated entities must aggregate all gifts that are subject to the $100 limit given by the regulated entity and each associated person of the regulated entity to a particular recipient

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14 Proposed subsection (d)(ii), on transaction-commemorative gifts.

15 Proposed subsection (d)(iii), on de minimis gifts.

16 Proposed subsection (d)(iv), on promotional gifts.

17 Proposed subsection (d)(v), on bereavement gifts.

18 Proposed subsection (d)(vi), on personal gifts.

over the course of a year however "year" is selected to be defined by the regulated entity (i.e., calendar year or fiscal year, or rolling basis). Proposed paragraphs .01 and .02 reflect existing FINRA interpretive guidance regarding the aggregation of gifts for purposes of its gift rules, which the MSRB has previously adopted.[19]

Proposed paragraph .05 of the Supplementary Material would remind regulated entities that, in addition to all the requirements of proposed amended Rule G-20, regulated entities may also be subject to other duties, restrictions, or obligations under state or other laws. In addition, proposed paragraph .05 would provide that proposed amended Rule G-20 would not supersede any more restrictive provisions of state or other laws applicable to regulated entities or their associated persons. As applied to many municipal advisors previously unregistered with, and unregulated by, the MSRB and their associated persons, the provision would serve to directly alert or remind municipal advisors that additional laws and regulations may apply in this area.[20]

C. Prohibition of Reimbursement for Entertainment Expenses

Proposed section (e) of Rule G-20 would provide that a regulated entity is prohibited from requesting or obtaining reimbursement for certain entertainment expenses from the proceeds of an offering of municipal securities. This provision would address a matter highlighted by a recent FINRA enforcement action.[21] Specifically, proposed section (e) would

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19 NASD Notice to Members 06-69 (Dec. 2006); 2007 MSRB Gifts Notice.

20 The MSRB previously had provided this alert or reminder through interpretative guidance. See 2007 MSRB Gifts Notice (noting that state and local laws also may limit or proscribe activities of the type addressed in this notice).

21 Department of Enforcement v. Gardnyr Michael Capital, Inc. (CRD No. 30520) and Pfilip Gardnyr Hunt, Jr., FINRA Disciplinary Proceeding No. 2011026664301 (Jan. 28, 2014) (concluding that, while the hearing panel did not "endorse the practice of municipal securities firms seeking and obtaining reimbursement for entertainment expenses incurred in bond rating trips," neither the MSRB's rules nor interpretive

provide that a regulated entity that engages in municipal securities or municipal advisory activities for or on behalf of a municipal entity or obligated person in connection with an offering of municipal securities is prohibited from requesting or obtaining reimbursement of its costs and expenses related to the entertainment of any person, including, but not limited to, any official or other personnel of the municipal entity or personnel of the obligated person, from the proceeds of such offering of municipal securities.

Proposed section (e), however, limits what would constitute an entertainment expense. Specifically, the term "entertainment expenses" would exclude "ordinary and reasonable expenses for meals hosted by the regulated entity and directly related to the offering for which the regulated entity was retained." Proposed subsection (e) also would be intended to allow the continuation of the generally accepted market practice of a regulated entity advancing normal travel costs (e.g., reasonable airfare and hotel accommodations) to personnel of a municipal entity or obligated person for business travel related to a municipal securities issuance, such as bond rating trips and obtaining reimbursement for such costs. Some examples of prohibited entertainment expenses that would, for purposes of proposed section (e), be included are tickets to theater, sporting or other recreational spectator events, sightseeing tours, and transportation related to attending such entertainment events.

D. Additional Proposed Amendments to Rule G-20

In addition to the previously discussed proposed amendments to Rule G-20, the MSRB also is proposing several amendments to assist readers with their understanding of and

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guidance put the dealer on fair notice that such conduct would be unlawful); see 2007 MSRB Gifts Notice (stating that "dealers should consider carefully whether payments they make in regard to expenses of issuer personnel in the course of the bond issuance process, including in particular but not limited to payments for which dealers seek reimbursement from bond proceeds, comport with the requirements of" Rules G-20 and G-17).

compliance with Rule G-20. These proposed amendments include (i) a revised rule title, (ii) a new provision stating the rule's purpose, and (iii) a re-ordering of existing provisions and additional defined terms.

(i) Amendment to Title

To better reflect the content of proposed amended Rule G-20, the title of the rule would be amended to include the phrase "Expenses of Issuance." This amendment would alert readers that the rule addresses expenses that are related to the issuance of municipal securities and that the reader should consult the rule if a question arises regarding such a matter.

(ii) Addition of Purpose Section

Proposed section (a) would set forth the purpose of Rule G-20. It would include a brief synopsis of the rule's scope and function.

(iii) Re-ordering and Definitions of Terms

To assist readers with their understanding of the rule, proposed section (b), at the beginning of the proposed amended rule, would define terms that currently are included in the last section of existing Rule G-20, section (e).

The MSRB is also proposing to include three additional defined terms solely for the purposes of proposed amended Rule G-20: "person," "municipal advisor" and "regulated entity." "Regulated entity" would mean a broker, dealer, municipal securities dealer or municipal advisor, but would exclude the associated persons of such entities. Incorporation of this term into the rule would simplify and shorten the text of proposed amended Rule G-20 as it would replace applicable references within proposed amended Rule G-20 to dealers while also including municipal advisors. The term "municipal advisor" would have the same meaning as in Section

15B(e)(4) of the Exchange Act.[22] The MSRB included that term to clarify that proposed amended Rule G-20 would apply to municipal advisors that are such on the basis of providing advice and also that are such on the basis of undertaking a solicitation.[23] "Person" would mean a natural person, codifying the MSRB's existing interpretive guidance stating the same.[24]

Proposed Amendments to Rule G-8

Proposed amendments to Rule G-8 would extend to municipal advisors the recordkeeping requirements related to Rule G-20 that currently apply to dealers.[25] Those recordkeeping requirements would be set forth under proposed paragraphs (h)(ii)(A) and (B) of Rule G-8. Municipal advisors would be required to make and retain records of (i) all gifts and gratuities that are subject to the $100 limit and (ii) all agreements of employment or for compensation for services rendered and records of all compensation paid as a result of those agreements. Municipal advisor recordkeeping requirements would be identical to the recordkeeping requirements to which dealers would be subject in proposed amended Rule G-8(a)(xvii)(A) and (B) (discussed below). The MSRB believes that the proposed amendments to Rule G-8 will

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22 15 U.S.C. 78o-4(e)(4).

23 Id.

24 See MSRB Interpretive Letter "Person" (Mar. 19, 1980).

25 The MSRB solicited comments regarding possible amendments to Rule G-9 in its Request for Comment on Draft Amendments to MSRB Rule G-20, on Gifts, Gratuities and Non-Cash Compensation, to Extend its Provisions to Municipal Advisors, MSRB Notice 2014-18 (Oct. 23, 2014). However, the MSRB omitted those amendments from this proposed rule change because their substance subsequently was addressed by a separate rulemaking initiative. See Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Consisting of Proposed New Rule G-44, on Supervisory and Compliance Obligations of Municipal Advisors; Proposed Amendments to Rule G-8, on Books and Records to be Made by Brokers, Dealers and Municipal Securities Dealers; and Proposed Amendments to Rule G-9, on Preservation of Records, Exchange Act Release No. 73415 (Oct. 23, 2014), 79 FR 64423 (Oct. 29, 2014) (File No. SR-MSRB-2014-06).

ensure common standards for municipal advisors and dealers, and will assist in the enforcement of proposed amended Rule G-20 by requiring that regulated entities, including municipal advisors, create and maintain records to document their compliance with proposed amended Rule G-20.

Further, the Board is proposing to amend the rule language contained in Rule G-8(a)(xvii)(A), (B), and (C) applicable to dealers, to reflect the revisions to proposed amended Rule G-20. Specifically, proposed amended paragraph (a)(xvii)(A) would provide that a separate record of any gift or gratuity subject to the general limitation of proposed amended Rule G-20(c) must be made and kept by dealers (emphasis added to amended rule text). The proposed amendments to paragraph (a)(xvii)(A) would track the reordering of sections in proposed amended Rule G-20 (replacing the reference to Rule G-20(a) with a reference to Rule G-20(c)) and would provide greater specificity as to the records that a dealer must maintain by referencing the terms used in proposed amended Rule G-20(c). Paragraph (a)(xvii)(B) would be amended to clarify that dealers must make and keep records of all agreements referred to in proposed amended Rule G-20(f) and records of all compensation paid as a result of those agreements (emphasis added to proposed amended rule text). Similar to paragraph (a)(xvii)(A), the proposed amendments to paragraph (a)(xvii)(B) would track the reordering of sections in proposed amended Rule G-20 (replacing the reference to Rule G-20(c) with a reference to proposed amended Rule G-20(f)) and would provide greater specificity as to the types of records that a dealer must maintain by referencing the terms used in proposed amended Rule G-20(f). Paragraph (a)(xvii)(C) also would be amended to track the reordering of sections in proposed amended Rule G-20 (replacing the references to Rule G-20(d) with references to proposed amended Rule G-20(g)).

2. Statutory Basis

Section 15B(b)(2) of the Exchange Act[26] provides that

> [t]he Board shall propose and adopt rules to effect the purposes of this title with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors.

Section 15B(b)(2)(C) of the Exchange Act[27] provides that the MSRB's rules shall

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2) and Section 15B(b)(2)(C) of the Exchange Act. The proposed rule change would help prevent fraudulent and manipulative practices, promote just and equitable principles of trade and protect investors, municipal entities, obligated persons and the public interest by reducing, or at least exposing, the potential for conflicts of interest in municipal advisory activities by extending the relevant provisions of existing Rule G-20 to municipal advisors and their associated persons. Proposed amended Rule G-20 would help ensure that engagements of municipal advisors, as well as engagements of dealers, are awarded on the basis of merit and not as a result of gifts made to employees controlling the award of such business. By expressly prohibiting the seeking

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[26] 15 U.S.C. 78o-4(b)(2).

[27] 15 U.S.C. 78o-4(b)(2)(C).

of reimbursement from the proceeds of issuance expenses for the entertainment of any person, including any official or other municipal entity personnel or obligated person personnel, proposed amended Rule G-20 would serve as an effective means of curtailing such practices by providing regulated entities with clear notice and guidance regarding the existing MSRB regulations of such matters. Further, proposed amended Rule G-20 would enhance compliance with Rule G-20 by codifying certain MSRB interpretive guidance and by adopting and codifying certain FINRA interpretive guidance. This codification not only will heighten regulated entity compliance and efficiency (and heighten regulatory enforcement efficiency), but will help prevent inadvertent violations of Rule G-20.

In addition, the proposed amendments to Rule G-8 would assist in the enforcement of Rule G-20 by extending the relevant existing recordkeeping requirements of Rule G-8 that currently are applicable to dealers to municipal advisors. Regulated entities, in a consistent and congruent manner, would be required to create and maintain records of (i) any gifts subject to the $100 limit in proposed amended Rule G-20(c) and (ii) all agreements for services referred to in proposed amended Rule G-20(f), along with the compensation paid as a result of such agreements. The MSRB believes that the requirement that all regulated entities create and retain the documents required by proposed amended Rule G-8 will allow organizations that examine regulated entities to more precisely monitor and promote compliance with the proposed rule change. Increased compliance with the proposed rule change would likely reduce the frequency and magnitude of conflicts of interests that could potentially result in harm to investors, municipal entities, or obligated persons, or undermine the public’s confidence in the municipal securities market.

Section 15B(b)(2)(L)(iv) of the Exchange Act[28] requires that rules adopted by the Board:

> not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud.

The MSRB believes that while the proposed rule change will affect all municipal advisors, it is a necessary regulatory burden because it will curb practices that could harm municipal entities and obligated persons. Specifically, the MSRB believes the proposed rule change will lessen the frequency and severity of violations of the public trust by elected officials and others involved in the issuance of municipal securities that might otherwise have their decisions regarding the awarding of municipal advisory business influenced by the gifts given by regulated entities and their associated persons. While the proposed rule change would burden some small municipal advisors, the MSRB believes that any such burden is outweighed by the need to maintain the integrity of the municipal securities market and to preserve investor and public confidence in the municipal securities market, including the bond issuance process.

The MSRB also believes that the proposed rule change is consistent with Section 15B(b)(2)(G) of the Exchange Act,[29] which provides that the MSRB's rules shall

> prescribe records to be made and kept by municipal securities brokers, municipal securities dealers, and municipal advisors and the periods for which such records shall be preserved.

The proposed rule change would extend the provisions of existing Rule G-8 to require that municipal advisors as well as dealers make and keep records of: gifts given that are subject to the $100 limit; and all agreements referred to in proposed section (f) (on compensation for services) and records of compensation paid as a result of those agreements. The MSRB believes

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[28] 15 U.S.C. 78o-4(b)(2)(L)(iv).

[29] 15 U.S.C. 78o-4(b)(2)(G).

that the proposed amendments to Rule G-8 related to books and records will promote compliance with and facilitate enforcement of proposed amended Rule G-20, other MSRB rules such as Rule G-17, and other applicable securities laws and regulations.

B. Self-Regulatory Organization's Statement on Burden on Competition

Section 15B(b)(2)(C) of the Exchange Act[30] requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, Section 15B(b)(2)(L)(iv) of the Exchange Act provides that MSRB rules may not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons provided that there is robust protection of investors against fraud.[31]

In determining whether these standards have been met, the MSRB was guided by the Board's Policy on the Use of Economic Analysis in MSRB Rulemaking.[32] In accordance with this policy, the Board has evaluated the potential impacts on competition of the proposed rule change, including in comparison to reasonable alternative regulatory approaches, relative to the baseline. The MSRB also considered other economic impacts of the proposed rule change and has addressed any comments relevant to these impacts in other sections of this document.

The MSRB does not believe that the proposed rule change will impose any additional burdens on competition, relative to the baseline, that are not necessary or appropriate in

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30 15 U.S.C. 78o-4(b)(2)(C).

31 15 U.S.C. 78o-4(b)(2)(L)(iv).

32 Policy on the Use of Economic Analysis in MSRB Rulemaking, available at, http://www.msrb.org/About-MSRB/Financial-and-Other-Information/Financial-Policies/Economic-Analysis-Policy.aspx

furtherance of the purposes of the Exchange Act. To the contrary, the MSRB believes that the proposed rule change is likely to increase competition.

Extending the relevant current restrictions to municipal advisors and their municipal advisory activities will, the MSRB believes, promote merit-based (e.g., the quality of advice, level of expertise and services offered by the municipal advisor) and price-based competition for municipal advisory services and curb or limit the selection or retention of a municipal advisor based on the receipt of gifts. A market in which the participants compete on the basis of price and quality is more likely to represent a "level playing field" for existing providers and encourage the entry of well-qualified new providers. Of particular note is the positive impact the proposed changes are likely to have on dealers that are also municipal advisors that may currently be at a competitive disadvantage vis-à-vis municipal advisors that are not subject to any of the current restrictions of Rule G-20 or the associated requirements of Rule G-8.

The proposed prohibition against the use of offering proceeds to pay certain entertainment expenses, which would apply to all regulated entities, is also, for the reasons stated above, likely to have no negative impact on competition and, to the contrary, may foster greater competition among all regulated entities.

The MSRB considered whether costs associated with the proposed rule change, relative to the baseline, could affect the competitive landscape. The MSRB recognizes that the compliance, supervisory and recordkeeping requirements associated with the proposed rule change may impose costs and that those costs may disproportionately affect municipal advisors that are not also broker-dealers or that have not otherwise previously been regulated in this area and have not already established compliance programs to comply with the current requirements of Rule G-20 or the associated requirements of Rule G-8 and MSRB Rule G-27. During the

comment period, the MSRB sought information that would support quantitative estimates of these costs, but did not receive any relevant data.

For those municipal advisors with no Rule G-20 compliance program or relevant experience, however, the MSRB believes the existing requirements of MSRB Rule G-44 provide a foundation upon which Rule G-20 specific compliance activities can be built and likely significantly reduces the marginal cost of complying with the proposed changes to Rule G-20. To further reduce compliance costs and reduce inadvertent violations of Rule G-20, the MSRB has distilled and incorporated additional interpretive guidance that was not previously included in the draft amendments and clarified specific points. The MSRB believes these refinements will help minimize costs that could affect the competitive landscape and will particularly benefit smaller firms.

Nonetheless, the MSRB recognizes that small municipal advisors and sole proprietors may not employ full-time compliance staff and that the cost of ensuring compliance with the requirements of the proposed rule change may be proportionally higher for these smaller firms, potentially leading to exit from the industry or consolidation. However, as the SEC recognized in its Order Adopting the SEC Final Rule, the market for municipal advisory services is likely to remain competitive despite the potential exit of some municipal advisors (including small entity municipal advisors) or the consolidation of municipal advisors.[33]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

[33] Exchange Act Release No. 70462 (Sept. 20, 2013) 78 FR 67468, 67608 (Nov. 12, 2013).

The MSRB received eight comment letters[34] in response to the Request for Comment on the draft amendments to Rules G-20 and G-8. Many commenters expressed support for the draft amendments. NAMA welcomed the amendments and their attempt to limit the gaining of influence through the giving of gifts and gratuities. BDA and SIFMA expressed their general support of extending Rule G-20's requirements to municipal advisors as each believed the amendments would promote a level-playing field for the regulation of municipal advisors and dealers acting in the municipal securities and municipal advisory marketplace. Several commenters, however, expressed concerns or suggested changes to the draft amendments. The comment letters are summarized and addressed below by topic.

A. $100 limit

NAMA and PFM expressed concerns that the $100 limit would not adequately apply to gifts given to certain recipients that, in their opinion, should be subject to the $100 limit of proposed amended Rule G-20. Further, NAMA and Anonymous suggested revisions to the amount of the $100 limit.

(i) Application of Proposed Amended Rule G-20(c) to certain recipients

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34 Comments were received in response to the Request for Comment from: An anonymous attorney ("Anonymous"), Bond Dealers of America: Letter from Michael Nicholas, Chief Executive Officer, dated December 8, 2014 ("BDA"); Chris Taylor, dated October 23, 2014 ("Taylor"); FCS Group: Letter from Taree Bollinger, dated October 24, 2014 ("FCS"); Investment Company Institute: Letter from Tamara K. Salmon, Senior Associate Counsel, dated December 5, 2014 ("ICI"); National Association of Municipal Advisors: Letter from Terri Heaton, President, dated December 8, 2014 ("NAMA") (formerly, National Association of Independent Public Finance Advisors); The PFM Group: Letter from Joseph J. Connolly, Counsel, dated November 7, 2014 ("PFM"); and Securities Industry and Financial Markets Association: Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, dated December 8, 2014 ("SIFMA").

NAMA believed the $100 limit would not apply to gifts given to employees or officials of municipal entities or obligated persons.[35] In NAMA's view, such persons, for the most part, do not engage in "municipal advisory activities" or "municipal securities business" as such business is proposed to be defined in amended MSRB Rule G-37, on political contributions and prohibitions on municipal securities business.

The MSRB has determined not to revise proposed amended Rule G-20(c) in response to NAMA's concerns. Even if employees or officials of municipal entities or obligated persons generally do not engage in "municipal advisory activities," the MSRB has made clear in existing interpretive guidance regarding Rule G-20 that issuer personnel are considered to engage in "municipal securities activities."[36] The language of both existing Rule G-20 and proposed amended Rule G-20 applies to gifts given in relation to this broad term, "municipal securities activities," and not the narrower term, "municipal securities business," which was developed for the particular purposes of MSRB Rule G-37.

PFM believed that section (c) of proposed amended Rule G-20 would not apply to gifts given to elected or appointed issuer officials, because the government, in its view, is not their "employer." Existing Rule G-20(a), however, which would be retained as proposed amended Rule G-20(c), broadly defines "employer" to include "a principal for whom the recipient of a

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35 NAMA stated that the term "municipal securities activities" is not defined by the proposed rule change, but did not provide any explanation of its statement or reason for its statement. The term "municipal securities activities" is a term that is used in existing Rule G-20 and frequently throughout the MSRB Rule Book.

36 See, e.g., 2007 MSRB Gifts Notice (stating that dealers should consider carefully whether payments of expenses they make in regard to expenses of issuer personnel, in the course of the bond issuance process, comport with Rules G-20 and G-17). The MSRB does not suggest that it has relevant regulatory authority over municipal entities or obligated persons; rather, the MSRB can appropriately regulate the conduct of dealers and municipal advisors in the giving of gifts to personnel of municipal entities and obligated persons.

payment or service is acting as agent or representative."[37] Thus, for purposes of existing and proposed amended Rule G-20, elected and appointed officials are considered employees of the governmental entity on behalf of which they act as agent or representative.

(ii) Changing the amount of the $100 limit

NAMA and Anonymous submitted comments regarding changing the amount of the $100 limit. NAMA proposed that the $100 limit be raised to $250 per person per year, believing this would strike the appropriate balance of allowing reasonable and customary gift giving while also limiting conflicts of interest, and would align Rule G-20 with MSRB Rule G-37. NAMA stated that, in Rule G-37, the MSRB determined that the contribution level of $250 (without the exceptions in Rule G-20) was sufficient to address the needs of individuals seeking to give political contributions while not allowing those contributions to be so excessive as to allow the contributor to gain undue influence. NAMA proposed that supplementary material be added to state, in effect, that occasional gifts of meals or tickets to theatrical, sporting, and other entertainments that are hosted by the regulated entity would be presumed to be so extensive as to raise a question of propriety if they exceed $250 in any year in conjunction with any gifts provided under Rule G-20(c). NAMA asserted that because the purposes of Rule G-20 and Rule

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37 See, e.g., First Fidelity Securities Group, Exchange Act Release No. 36694, Administrative Proceeding File No. 3-8917 (Jan. 9, 1996) (finding violations of Rule G-20 based on payments to financial consultants of issuer, concluding they were "agent[s] or representative[s]" of issuer within the meaning of the rule). See Self-Regulatory Organizations; Order Approving A Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Recordkeeping & Record Retention Requirements Concerning Gifts & Gratuities, Exchange Act Release No. 34372 (July 13, 1994) (File No. SR-MSRB-94-7) ("Rule G–20 is intended to prevent fraud and inappropriate influence in the municipal securities market by limiting the amount of gifts or gratuities from municipal securities dealers to persons not employed by the dealers, including issuer officials and employees of other dealers, in relation to municipal securities activities." (citation omitted)).

G-37 are united in their attempt to limit a dealer's or a municipal advisor's ability to gain undue influence through the giving of gifts or contributions, that the rules should be written similarly.

Anonymous suggested that the MSRB set a $20 or less per gift limit and lower the $100 limit to $50 per year to level the playing field among all types of municipal advisors and to attain broader compatibility with various federal, state and local regulations regarding gifts. Anonymous further stated that the effective limit to a municipal advisor who also is registered as an investment adviser and subject to the requirements of the Investment Advisers Act of 1940 (the "Advisers Act") (a "municipal advisor/investment adviser"), even in the absence of proposed amended G-20 generally would be zero because, in its view, a municipal advisor/investment adviser is subject to Advisers Act Rule 206(4)-5 (the Advisers Act "pay to play" rule) in its municipal advisory activities.[38] Anonymous stated that Rule 206(4)-5 defines payments as "any gift, subscription, loan, advance, or deposit of money or anything of value," and contains no de minimis exception.

Rule G-37 is designed to address potential political corruption that may result from pay-to-play practices, [39] and as such, is tailored in light constitutional First Amendment concerns. Existing Rule G-20, on the other hand, is designed to address commercial bribery by minimizing the conflicts of interest that arise when a dealer attempts to induce organizations active in the municipal securities market to engage in business with such dealers by means of gifts or

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38 17 CFR 275.206(4)-5.

39 Exchange Act Release No. 33868, 59 FR 17621, 17624 (Apr. 13, 1994) (File No. SR-MSRB-1994-02).

Pay-to-play practices typically involve a person making a cash or in-kind political contribution (or soliciting or coordinating with others to make such contributions) in an attempt to influence the selection of the contributor to engage in municipal securities activities or municipal advisory activities.

gratuities given to employees of such organizations.[40] Rules G-37 and G-20 thus address substantially different regulatory needs in different legal contexts, and the dollar thresholds used in those rules currently differ on that basis. The MSRB believes that the mere purported alignment with Rule G-37 is an insufficient justification for raising the $100 limit.

Further, the parallel that Anonymous draws between proposed amended Rule G-20 and the SEC's regulation of political contributions by certain investment advisors under Advisers Act Rule 206(4)-5 fails to account for the difference in the scope of each regulation. Specifically, Anonymous' interpretation of the regulations fails to recognize the much broader application of proposed amended Rule G-20. Proposed amended Rule G-20 would apply to any gifts given in relation to any of the municipal securities or municipal advisory activities of the recipient's employer. Advisers Act Rule 206(4)-5, on the other hand, is much narrower in application – it restricts only payments for a solicitation of a government entity for investment advisory services.[41] Also, proposed amended Rule G-20 would explicitly apply to gifts given to many regulated persons (e.g., associated persons of dealers and municipal advisors). By contrast, the complete prohibition Anonymous cites from Advisers Act Rule 206(4)-5 does not apply to payments to defined regulated persons. While it may be appropriate to limit payment for a solicitation to zero unless certain conditions are met, this is not a sufficient rationale to reduce the $100 limit for gifts in proposed amended Rule G-20(c). Adopting Anonymous' recommendation would likely result in an overly and unnecessarily restrictive prohibition that would not allow for appropriate social interactions between regulated entities and their

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40 See supra n.5.

41 17 CFR 275.206(4)-5.

prospective and/or actual business associates. The MSRB, at this time, has determined not to decrease the $100 limit for gifts set forth in proposed amended Rule G-20(c).

B. Gifts Not Subject to the $100 limit

(i) "Normal Business Dealings"

NAMA expressed concern that proposed amended Rule G-20(d), which sets forth the exclusions from the $100 limit, leaves open opportunities for abuse particularly because the associated books and records requirement does not require the maintenance of records of excluded gifts. NAMA expressed concern in particular regarding proposed subsection (d)(i), which would, under certain circumstances, exclude from the $100 limit the giving of occasional meals or tickets to theatrical, sporting or entertainment events. In NAMA's view, regulated entities would be able to engage in otherwise impermissible gift giving under the guise of "normal business dealings," and such gift giving likely would result in the improper influence that Rule G-20 was designed to curtail. NAMA suggested modifying the amended rule to impose an aggregate limit of $250 on all gifts given as part of "normal business dealings," believing the aggregate limit would be consistent with the dollar threshold used in MSRB Rule G-37.

The MSRB, like NAMA, is concerned that the exclusions from the $100 limit not be abused. For this reason, proposed amended Rule G-20 would place important conditions on the several types of excluded gifts, including those in the category of "normal business dealings." All of the gifts described in proposed section (d) would be excluded only if they do not "give rise to any apparent or actual material conflict of interest," and, under proposed section (d)(i), "normal business dealing" gifts would be excluded only if they are not "so frequent or so extensive as to raise any question of propriety." Moreover, dealers and municipal advisors are subject to the fundamental fair-dealing obligations of MSRB Rule G-17. Rule G-17 likely

addresses at least some of the concerns raised by NAMA by prohibiting regulated entities from characterizing excessive or lavish expenses for the personal benefit of issuer personnel as an expense of the issue, as such behavior could possibly constitute a deceptive, dishonest or unfair practice.[42] The MSRB has determined at this juncture not to further revise proposed amended Rule G-20 because the MSRB believes the proposed rule change adequately addresses the concerns raised by NAMA relating to excluded gifts generally and "normal business dealings" in particular.

(ii) Nominal Value Standard for Promotional Gifts

ICI expressed concern regarding proposed amended Rule G-20(d)(iv), which provides that promotional gifts generally would not be subject to the $100 limit if such gifts are of nominal value, i.e., "substantially below the general $100 limit." ICI stated that this standard is too vague, would be difficult to comply with, and that the resulting ambiguity would permit the MSRB to second guess a regulated entity's good faith effort to comply with the rule. ICI stated that deleting the phrase would better align Rule G-20 with FINRA's comparable non-cash compensation rule for investment company securities, and would facilitate registrants' compliance with such rules.

Since 2007, the MSRB has used the "substantially below the general $100 limit" standard by way of its interpretive guidance, which incorporates FINRA guidance to the same effect under the FINRA gift and non-cash compensation rules.[43] The MSRB believes that it is appropriate at this time to retain this standard for determining whether a promotional gift is of

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42 See 2007 MSRB Gifts Notice (stating that a dealer should be aware that characterizing excessive or lavish expenses for the personal benefit of issuer personnel as an expense of the issue, may, depending on all the facts and circumstances, constitute a deceptive, dishonest, or unfair practice in violation of Rule G-17).

43 FINRA Rules 3220 and 2320; NASD Rule 2820.

nominal value because, among other reasons, the current standard is harmonized with more analogous FINRA regulation, ICI's concern about consequences from perceived vagueness is speculative, and a bright-line limit could distort behavior resulting in increased gift giving at or near any bright-line limit.

(iii) Gifts of Promotional Items and "Other Business Logos"

ICI requested clarification regarding the application of proposed amended Rule G-20 to promotional gifts that display the brand or logo of the product for which the regulated entity is acting as a distributor, such as a 529 college savings plan, and not the brand or logo of the regulated entity itself. ICI stated its belief that Rule G-20 would not appear to be triggered when a regulated entity utilizes promotional gifts that display the logo of a client or product of a regulated entity, such as a logo for a 529 college savings plan, because such gifts do not promote that regulated entity's brand or logo. ICI recommended that the MSRB clarify that proposed amended Rule G-20(c) does not apply at all in such instances, and that the regulated entity therefore need not rely on an exclusion for the giving of such promotional gifts.

The restrictions of proposed Rule G-20 are not, as suggested by ICI, triggered because a gift given by a regulated entity or its associated person promotes that regulated entity's brand or logo. Rather, proposed amended Rule G-20 has potential application to the giving of "any thing or service of value" in relation to the recipient's employer's municipal securities or municipal advisory activities (emphasis added). The proposed amended rule provides for exclusions of certain gifts, including the exclusion for promotional gifts "displaying the regulated entity's corporate or other business logo." As such, if the gift items described by ICI meet all of the requirements to qualify for an exclusion as described in proposed section (d) and proposed subsection (d)(iv), then the restrictions of proposed amended Rule G-20(c) would not apply.

Proposed paragraph .03 to the Supplementary Material would provide this guidance regarding promotional gifts, and due to the apparent misapprehension of the scope of the rule in the commentary, would clarify that such gifts are potentially subject to the $100 limit of proposed amended section (c).

C. Incorporation of Applicable FINRA Interpretive Guidance

NAMA commented that the MSRB should codify all applicable FINRA guidance on gifts and gratuities into the rule language of Rule G-20. NAMA noted that many municipal advisors are not FINRA members and stated that regulated entities (particularly non-FINRA members) should not be expected to review FINRA interpretive guidance to fully understand their obligations under Rule G-20.

The MSRB generally agrees with NAMA. In addition, the MSRB recognizes that some municipal advisors may be establishing compliance programs to comply with MSRB rules for the first time. The MSRB further believes that it will be more efficient for all regulated entities and regulatory enforcement agencies if additional applicable FINRA interpretive guidance is codified in proposed amended Rule G-20. As such, the MSRB has distilled and included in proposed amended Rule G-20 the substance of additional portions of the interpretive guidance contained in NASD Notice to Members 06-69 addressing the valuation and aggregation of gifts. As previously noted, proposed paragraph .01 of the Supplementary Material would state that a gift's value should be determined by regulated entities generally according to the higher of cost or market value. Proposed paragraph .02 of the Supplementary Material would state that regulated entities must aggregate all gifts that are subject to the $100 limit given by the regulated entity and each associated person of the regulated entity to a particular recipient over the course of a year.

D. Alignment with FINRA Rules

ICI commented that it is supportive of the MSRB's rulemaking effort to align, when appropriate, MSRB rules with congruent FINRA rules, and that the comments ICI submitted were intended to foster additional alignment with FINRA rules. In particular, ICI stated that the MSRB should consider how it might better align Rule G-20 with FINRA's comparable rules, including NASD Rule 2830(l)(5) since that rule was not addressed in the MSRB's Request for Comment. In addition, ICI suggested that the MSRB should monitor FINRA's retrospective review relating to gifts, gratuities and non-cash compensation and consider making conforming amendments to its rules to keep in line with any amendments that FINRA might adopt.

As part of the MSRB's rulemaking process, the MSRB considers the appropriateness and implications of harmonization between MSRB and FINRA rules that address similar subject matters. The MSRB believes that such harmonization, when practicable, can facilitate compliance and reduce the cost of compliance for regulated entities.

As discussed above, the MSRB has consolidated and proposed to codify a significant portion of FINRA's interpretive guidance set forth in NASD Notice to Members 06-69 on gifts and gratuities in proposed amended Rule G-20. In addition, portions of proposed amended Rule G-20 and existing Rule G-20 are substantially similar to other applicable NASD and FINRA rules, including NASD Rule 2830(l)(5), Investment Company Securities, and FINRA Rule 2320(g)(4), Variable Contracts of an Insurance Company. With regard to FINRA's retrospective review of its gifts, gratuities and non-cash compensation rules, the MSRB has monitored from the beginning of this rulemaking initiative, and continues to monitor, FINRA's activities in this area, and may consider further potential harmonization if FINRA proposes or adopts any amendments to its relevant rules.

E. Entertainment Expenses and Bond Proceeds

(i) Definition of Entertainment Expenses

BDA, NAMA, SIFMA, and Anonymous requested clarification regarding the expenses that would be subject to the prohibition in proposed amended Rule G-20(e). BDA requested that the MSRB clarify "entertainment expenses" versus expenses for "normal and necessary meals" and "normal travel costs." BDA also suggested that the MSRB treat a regulated entity's meals with clients that are generally part of travel separately from items like tickets to sporting or theatrical events, which BDA believed was clearly entertainment. BDA requested that, if the MSRB were to not amend proposed amended Rule G-20(e) itself, that the MSRB should provide interpretive guidance to clarify the issue.

NAMA commented that the entertainment expense reimbursement prohibition was appropriate and suitably tailored. Nevertheless, NAMA believed that it would be clearer if entertainment expenses were defined as "necessary expenses for meals that comply with the expense guidelines of the municipal entity for their personnel (any amounts in excess would not be reimbursable and subject to limitation)."

SIFMA commented that "entertainment expenses" should not include expenses "reasonably related to a legitimate business purpose." SIFMA stated that such a revision to the draft rule language would improve the clarity of the rule and would aid in compliance with the rule. Further, SIFMA suggested that the entertainment expense provision might be clearer if the provision stated that meals that are "a fair and reasonable amount, indexed to inflation, such as not to exceed $100 per person" are not, for purposes of the provision, entertainment expenses and therefore not subject to the prohibition.

Anonymous suggested that the MSRB modify proposed section (e) to clarify that the prohibition is not intended to unnecessarily restrict how a regulated entity may appropriately use the fees it earns from its clients when the fees are paid from the proceeds of an offering of municipal securities.

After careful consideration of these comments, the MSRB has included a clarification in the proposed entertainment expense provision to conform proposed amended Rule G-20(e) to a standard used in tax law for analogous purposes. That tax law standard is used to identify a legitimate connection to business activity and avoid excess expenses in relation to that activity. The modification replaces the phrase "reasonable and necessary expenses for meals" with "ordinary and reasonable expenses for meals" (emphasis added) hosted by the regulated entity and directly related to the offering for which the regulated entity was retained. Beyond this modification, the MSRB believes that the proposed entertainment expense provision, including with respect to its scope, is sufficiently clear. The MSRB believes that the inclusion of a discrete dollar limit or other more prescriptive language as suggested by some commenters would result in an overly inflexible rule. Further, the MSRB believes that making the scope of the prohibition turn on the existence and parameters of client entertainment and gift policies, as suggested by NAMA, would result in a lack of uniformity and potential confusion among market participants.

(ii) Other Comments Regarding Entertainment Expenses and Bond Proceeds

SIFMA stated that it agreed with the intent of the prohibition of seeking or obtaining reimbursement for entertainment expenses from the proceeds of an issuance of municipal securities. Nonetheless, SIFMA commented that it was concerned: (i) about the "function and interpretation of the prohibition;" (ii) that the entertainment expense provision would prohibit a

practice which is currently not prohibited by MSRB rules;[44] (iii) that regulated entities should be able to accommodate clients that would like entertainment expenses to be paid for and reimbursed to the dealer out of the proceeds of the offering;[45] and (iv) that the provision augurs "federal regulatory creep" over state and local issuers, which would "become another area where regulators will hold dealers responsible indirectly for state and local issuer behavior that they cannot regulate directly." Anonymous stated that it believed the entertainment prohibition provision would prohibit an investment adviser registered under the Advisers Act ("RIA") employed by firms that also employ municipal advisors from obtaining reimbursement for appropriate business expenses (such as an RIA taking a commercial client of their investment advisory business out to lunch to discuss business) because it construed the firm's funds (which were earned municipal advisory fees paid to the firm from bond proceeds) as retaining their character as "bond proceeds."

Proposed amended Rule G-20(e) would address a concern of the MSRB that reimbursement of certain expenses from bond proceeds may violate MSRB rules, including Rules G-20 and G-17.[46] The MSRB has provided guidance that obtaining reimbursement for expenses from bond proceeds, even "if thought to be a common industry practice" may raise a question under applicable MSRB rules depending on "the character, nature and extent of

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44 SIFMA stated that it understood that such practices may be permitted or prohibited depending on state or local laws.

45 The MSRB believes that SIFMA's recommendation would circumvent the purpose of the proposed entertainment expense provision because it would allow dealers to seek or obtain reimbursement for entertainment expenses from an issuer by including such expenses in the underwriter's discount. The MSRB believes that SIFMA's suggested change would be contrary to the intent of the proposed entertainment expense provision.

46 See supra n. 21.

expenses paid by dealers or reimbursed as an expense of the issue."[47] The MSRB believes that proposed amended Rule G-20(e) will promote just and equitable principles of trade.

Further, the proposed reimbursement prohibition is explicitly limited in its application to the conduct of dealers and municipal advisors. It would not prohibit a municipal entity from using bond proceeds to pay for entertainment costs, though other laws or regulations outside of MSRB rules may apply. The proposed prohibition also would not preclude dealers and municipal advisors from providing business entertainment – i.e., items or services of value – that is within the scope of "normal business dealing," which would include, for example, meals or tickets to theatrical, sporting or other entertainments, subject to the conditions of proposed amended Rule G-20(d)(i) (the provision on normal business dealings).

Accordingly, the MSRB has determined not to revise proposed amended Rule G-20, at this time, in response to the comments from SIFMA or Anonymous relating to the entertainment expense reimbursement prohibition.

F. Application of Non-Cash Compensation Provisions to Municipal Advisors

In response to the Request for Comment, NAMA commented that the provisions of draft amended section (g), which would have extended the non-cash compensation provisions in connection with primary offerings that currently apply to dealers to municipal advisors and their associated persons, appeared to be inapplicable to non-dealer municipal advisors. Anonymous supported the extension of such provisions to municipal advisors.

After carefully considering the comments, the MSRB believes, at this juncture, that extending the requirements of proposed section (g) to a municipal advisor and any associated

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47 Id.

person thereof is not necessary. However, the MSRB intends to monitor the activities of municipal advisors in relation to its rules, and may revisit this matter at a future date.

G. Potential Regulatory Alternatives

Anonymous suggested that the MSRB consider two alternatives to proposed amended Rule G-20. According to Anonymous, to ensure that municipal advisors/investment advisers are not unduly disadvantaged by the ability of non-RIAs to give gifts, the MSRB should incorporate Advisers Act Rule 206(4)-5 into Rule G-20 and clarify that Rule 206(4)-5 also applies to municipal advisory activities of any MSRB-regulated entity. Anonymous believed that because Rule 206(4)-5 already applies to municipal advisors/investment advisers, the incorporation of that rule into Rule G-20 would reduce duplicative rulemaking and would increase regulatory certainty. Alternatively, Anonymous suggested that the MSRB recommend to the SEC that it adjust Rule 206(4)-5 to be more compatible with proposed amended Rule G-20 as to the municipal advisory activities of municipal advisors/investment advisers.

The MSRB believes that Anonymous's concerns are addressed by other MSRB rules or rule provisions that the MSRB has already proposed. Advisers Act Rule 206(4)-5 prohibits an investment adviser from providing or agreeing to provide, directly or indirectly, payments to solicit a government entity for investment advisory services unless such person is a defined regulated person. MSRB Rule G-38, solicitation of municipal securities business, flatly prohibits a dealer, directly or indirectly, from paying any person who is not an affiliated person of the dealer for a solicitation of municipal securities business on behalf of such dealer. In addition, proposed MSRB Rule G-42, on duties of non-solicitor advisors, currently pending with the SEC for approval or disapproval, would generally prohibit payments for solicitations with certain limited exceptions that would include allowing payments that constitute "normal business

dealings" as defined in Rule G-20, reasonable fees paid to another registered municipal adviser, and payments to an affiliate. The MSRB therefore believes that it is unnecessary to incorporate Advisers Act Rule 206(4)-5 into Rule G-20 to address Anonymous's concerns.

H. Recordkeeping Requirements

(i) Recordkeeping for Certain Gifts not Subject to $100 limit

NAMA commented that a regulated entity should be required to maintain records for gifts that are subject to either the normal business dealing exclusion under proposed amended Rule G-20(d)(i) or the personal gift exclusion under proposed amended Rule G-20(d)(vi). NAMA noted that gifts that constitute normal business dealings within proposed amended Rule G-20(d)(i) require recordkeeping to comply with certain requirements of the Internal Revenue Service and of various municipalities, such as in California. Therefore, according to NAMA, imposing a recordkeeping requirement would not be an entirely new burden, would provide protection against pay-to-play activities and would provide a means to determine whether such gifts give rise to questions of impropriety or conflicts of interest. NAMA also commented that, to afford meaningful enforcement, the MSRB should require a regulated entity to keep records of any personal gifts given pursuant to proposed amended Rule G-20(d)(iv) that were paid for, directly or indirectly, by the regulated entity.

After carefully considering the comments, the MSRB continues to believe that the recordkeeping requirements of Rule G-8(h) that relate to Rule G-20 should be limited to items that are subject to the $100 limit. The MSRB believes this approach to recordkeeping under Rule G-20 will continue to harmonize with existing FINRA recordkeeping requirements for dealers. Moreover, significant safeguards that are provided by other MSRB rules, including Rules G-27, G-44, and G-17, weigh against imposing the additional recordkeeping burdens on regulated

entities suggested by NAMA. As the MSRB reminded dealers in its 2007 MSRB Gifts Notice on Rule G-20, dealers are required to have supervisory policies and procedures in place under Rule G-27 that are reasonably designed to prevent and detect violations of Rule G-20 (and of other applicable securities laws).[48] Recently adopted Rule G-44, on supervision and compliance obligations of municipal advisors, imposes similar supervisory requirements on municipal advisors. Further, and also as the MSRB reminded dealers in 2007 in particular contexts, the making of payments that might not otherwise be subject to Rule G-20 could constitute separate violations of Rule G-17, which currently applies to municipal advisors and dealers.[49]

(ii) Recordkeeping of Services Agreements

PFM objected to the draft amendment to Rule G-8(h)(ii)(B) that would require municipal advisors to keep all agreements referred to in draft amended G-20(f), on compensation for services. PFM stated that this requirement would be a substantial and unjustified burden on municipal advisors due to the large number of transactions for which, it believed, they would need to maintain records. Furthermore, PFM believed that the MSRB does not have statutory authority to require recordkeeping of contracts for services of a non-securities related nature and stated that it believed that Rule G-8(h)(ii)(B) would require such recordkeeping. PFM suggested that draft amended Rule G-8(h)(ii)(B) be revised to limit the required agreements to those "relied upon by the registrant pursuant to Rule G-20(c)" rather than those "referred to in Rule G-20(f)." FCS requested clarification as to whether Rule G-8(h)(ii)(B) would require a municipal advisor to keep a record of every contract the municipal advisor enters into "for municipal advisory services whether or not any gifts [were] given."

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48 2007 MSRB Gifts Notice.

49 Id.

The comments from PFM and FCS appear to be predicated on a misunderstanding of the types of agreements that are referred to in proposed section (f). The proposed section provides that the $100 limit does not apply to compensation for services that are rendered pursuant to a prior written agreement meeting certain content requirements. Thus, the agreements referred to in proposed section (f) are those under which compensation would otherwise be subject to the $100 limit (i.e., compensation in relation to the municipal securities or municipal advisory activities of the employer of the recipient). As such, agreements of a non-securities related nature, about which PFM expressed concern, would not be required to be kept by proposed amended Rule G-8(h)(ii)(B).

(iii) Recordkeeping by Registered Investment Advisers

Anonymous commented that it believed that while the draft recordkeeping requirements were relevant, such requirements were unnecessary for municipal advisors/investment advisers because, according to Anonymous, RIAs are required to keep such records under the Advisers Act Rule 206(4)-3.[50] Anonymous suggested that the MSRB consider exempting municipal advisors/investment advisers from the recordkeeping requirements associated with Rule G-20.

To help ensure a level playing field as well as to enhance compliance and enforcement, the MSRB believes that all regulated entities, including municipal advisors/investment advisers, should be subject to substantially identical recordkeeping requirements associated with Rule G-20. Therefore, regardless of whether a regulated entity also may be subject to a comparable requirement under other federal securities laws, that regulated entity would be required to comply with Rule G-20's associated recordkeeping requirements.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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[50] 17 CFR 275.206(4)-3.

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period of up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MSRB-2015-09 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

All submissions should refer to File Number SR-MSRB-2015-09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed

rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 am and 3:00 pm. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2015-09 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, pursuant to delegated authority.[51]

Secretary

[51] 17 CFR 200.30-3(a)(12).

MSRB
Municipal Securities Rulemaking Board

Regulatory Notice

2014-18

Publication Date
October 23, 2014

Stakeholders
Municipal Securities Dealers, Municipal Advisors, Issuers

Notice Type
Request for Comment

Comment Deadline
December 8, 2014

Category
Fair Practice

Affected Rules
Rule G-8; Rule G-9; Rule G-20

Request for Comment on Draft Amendments to MSRB Rule G-20, on Gifts, Gratuities and Non-Cash Compensation, to Extend its Provisions to Municipal Advisors

Overview

The Municipal Securities Rulemaking Board (MSRB) is seeking comment on draft amendments to MSRB Rule G-20, on gifts, gratuities and non-cash compensation given or permitted to be given by brokers, dealers and municipal securities dealers ("dealers"). The draft amendments are designed to apply Rule G-20 and the related record keeping requirements of MSRB Rules G-8 and G-9 to municipal advisors. Also, as part of the MSRB's broad initiative to streamline its rulebook and codify interpretive guidance into MSRB rules, the draft amendments would incorporate various relevant interpretive guidance. Additionally, the draft amendments would add a new provision to explicitly prohibit MSRB regulated entities from expensing certain entertainment costs to municipal securities issuances.

Comments should be submitted no later than December 8, 2014, and may be submitted in electronic or paper form. Comments may be submitted electronically by clicking here. Comments submitted in paper form should be sent to Ronald W. Smith, Corporate Secretary, Municipal Securities Rulemaking Board, 1900 Duke Street, Suite 600, Alexandria, Virginia 22314. All comments will be available for public inspection on the MSRB's website.[1]

Questions about this notice should be directed to Michael L. Post, Deputy General Counsel, Sharon Zackula, Associate General Counsel, or Benjamin A. Tecmire, Counsel, at 703-797-6600.

[1] Comments are posted on the MSRB website without change. Personal identifying information such as name, address, telephone number, or email address will not be edited from submissions. Therefore, commenters should only submit information that they wish to make available publicly.

Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act") amended Section 15B of the Securities Exchange Act of 1934 ("Exchange Act" or "Act") to provide for the regulation by the Securities and Exchange Commission (SEC) and the MSRB of municipal advisors and to grant the MSRB certain authority to protect municipal entities and obligated persons.[2] The Dodd-Frank Act establishes a federal regulatory regime that requires municipal advisors to register with the SEC and prohibits them from engaging in any fraudulent, deceptive, or manipulative act or practice.[3]

The relevant legislative history of the Dodd-Frank Act indicates Congress was concerned with the previously unregulated conduct of municipal advisors and concluded that the MSRB should be the self-regulatory organization designated to adopt a regulatory framework to regulate such conduct.[4] The SEC subsequently reaffirmed that the regulation of municipal advisors and their advisory activities is intended to address problems observed in their previously unregulated conduct, which the SEC identified as including undisclosed conflicts of interest, advice rendered by financial advisors without adequate training or qualifications, and the failure of certain municipal advisors to put the duty of loyalty to their municipal entity clients ahead of their own interests.[5]

Existing Rules G-20, G-8 and G-9

Rule G-20 addresses a particular area of potential conflict of interest. The rule prohibits a dealer from giving directly or indirectly any thing or service of value, including gratuities, in excess of $100 per year to a person (other than an employee of the dealer), if such payments or services are in relation to the municipal securities activities of the employer of the recipient (the "$100 limit"). The $100 limit does not apply to gifts considered to be "normal business dealings," which include: (a) "reminder advertising"; (b) entertainment (*e.g.,* gifts of meals, sports tickets and other tickets) hosted by

[2] Pub. Law No. 111-203, 124 Stat. 1376 (2010) (the "Dodd-Frank Act").

[3] *See* Section 15B(a)(1)(B) and (a)(5) of the Exchange Act.

[4] S. Report 111-176, at 38 (2010) ("Senate Report").

[5] Exchange Act Release No. 70462 (Sept. 20, 2013), 78 FR 67468 (Nov. 12, 2013) at 67469 ("MA Registration Adopting Release"); see id. at 67475 nn.104-6 and accompanying text (discussing relevant enforcement actions) (http://www.sec.gov/rules/final/2013/34-70462.pdf). See also, MSRB Notice 2014-01 (Jan. 9, 2014), Request for Comment on Draft MSRB Rule G-42, on Duties of Non-Solicitor Municipal Advisors, for more information about the Dodd-Frank Act and the MSRB's development of a municipal advisor regulatory regime.

the dealer (*i.e.*, attended by the dealer or its associated person); and (c) the costs of sponsored legitimate business functions. The "normal business dealings" exclusion applies, however, only if such gifts are "not so frequent or so extensive as to raise any question of propriety."

The $100 limit also does not apply to contracts of employment or compensation for services rendered by a person employed by another, if there is a prior written agreement that includes the consent of the employer of such person, nature of the services and amount of compensation. Finally, the $100 limit does not apply to the payment or receipt of non-cash compensation in connection with the sale and distribution of a primary offering ("non-cash compensation provision"), subject to certain conditions described in Rule G-20.

Rule G-20 Interpretive Guidance

Over the course of several years, the MSRB has adopted various interpretive guidance under Rule G-20, primarily addressing gifts that are not subject to the $100 limit. A 2007 MSRB interpretive notice states that interpretive guidance published by the National Association of Securities Dealers ("NASD") (now Financial Industry Regulatory Authority or "FINRA") to assist dealers in complying with NASD Rule 3060 (now FINRA Rule 3220) regarding gifts also applies to comparable provisions of MSRB Rule G-20 (the "2007 Notice").[6] The 2007 Notice specifically refers to NASD Notice 06-69, which provides interpretive guidance with respect to the exclusion of personal gifts; gifts of de minimus value and promotional items; the valuation of gifts; and the aggregation of the value of gifts.[7]

In addition, FINRA has published an interpretive letter providing guidance on bereavement gifts, which has not been adopted by the MSRB.[8]

Existing Rules G-8 and G-9

Existing Rules G-8 and G-9 require dealers to make and retain certain records relating to their Rule G-20 obligations. These requirements include making and retaining records of all gifts and gratuities that are subject to the $100 limit; all agreements of employment or for compensation for services

[6] Rule G-20 Interpretive Notice, Dealer Payments in Connection with the Municipal Securities Issuance Process (Jan. 29, 2007) ("2007 Notice").

[7] NASD Notice 06-69 (Dec. 2006) (http://www.finra.org/Industry/Regulation/Notices/2006/P018023).

[8] *See* FINRA Letter to Amal Aly, SIFMA (Reasonable and Customary Bereavement Gifts), dated December 17, 2007 (https://www.finra.org/Industry/Regulation/Guidance/InterpretiveLetters/P037695).

rendered; and all non-cash compensation in connection with the sale and distribution of a primary offering as described in Rule G-20.

Summary of Draft Amendments to Rules G-20, G-8 and G-9

The draft amendments to Rule G-20 would, generally: (i) extend the rule's existing provisions relating to gifts and gratuities and non-cash compensation to municipal advisors and their associated persons; (ii) streamline and codify applicable interpretive guidance; and (iii) explicitly prohibit the seeking or obtaining of reimbursement by a regulated entity of certain entertainment expenses from the proceeds of an offering of municipal securities. In addition, several other clarifying, non substantive, amendments have been made to improve the rule's readability and aid regulatory entities in complying with the rule's requirements.

Rule G-20, as amended, generally would apply the same policies embodied in the current rule (already applicable to dealers) to municipal advisors and their associated persons, including:

- the prohibition of gifts or gratuities in excess of $100 per person per year in relation to the municipal securities activities of the recipient's employer;
- the exclusion from the $100 limit of "normal business dealings"; and
- the exclusion from the $100 limit of contracts of employment and contracts for compensation for services.

The concept of "reminder advertising" would be deleted from the "normal business dealings" exclusion under current paragraph (b). This amendment would clarify the types of gifts in the nature of reminder advertising that would be excluded from the $100 limit (*e.g.*, transaction-commemorating, de minimis or promotional gifts). These changes would conform draft amended paragraph (d) with current FINRA interpretive guidance that the MSRB has previously stated applies to Rule G-20. The draft amendments would also make the $100 limit applicable to gifts given in relation to the municipal advisory activities of the employer of the recipient. Currently, Rule G-20 only applies to gifts given in relation to the municipal *securities* activities of an employer of a recipient.

MSRB and FINRA Interpretive Guidance

The draft amendments would streamline and codify FINRA interpretive guidance previously adopted by the MSRB and incorporate additional relevant FINRA interpretive guidance that has not previously been adopted by the MSRB. The interpretive guidance codified by the draft amendments

would clarify that certain gifts and gratuities generally would not be subject to the $100 limit, including: transaction-commemorating, de minimis, promotional, bereavement and personal gifts. These draft amendments would apply to all regulated entities and their associated persons.

Codifying currently applicable interpretive guidance and grouping the provisions in one paragraph of the draft amendments would make the rule easier to comply with and implement. The draft codification should also increase awareness among market participants of the terms of currently applicable interpretative guidance which may in turn promote compliance.

Interpretive guidance regarding gifts that would be superseded or made redundant because such guidance would be codified in rule text would be deleted as part of the draft amendments. Other MSRB guidance, and portions of applicable FINRA interpretive guidance that are not codified by the draft amendments, would continue to be applicable to the comparable provisions of Rule G-20.[9] Any interpretive guidance deleted as result of the draft amendments would be archived and accessible on the MSRB website.

Personal Gifts

Draft paragraph .01 of the Supplementary Material to Rule G-20 would clarify the treatment of personal gifts under draft paragraphs (c) and (d). Paragraph .01 would also state that a number of factors would be considered when determining whether a gift is in relation to the municipal securities or municipal advisory activities of the employer of the recipient, including but not limited to the nature of any pre-existing personal or family relationship between the associated person giving the gift and the recipient, and whether the associated person or the regulated entity with which he or she is associated paid for the gift.

Applicability of Other Laws and Regulations

Draft paragraph .02 of the Supplementary Material to Rule G-20 would clarify that, in addition to the requirements of Rule G-20, regulated entities may also be subject "to other duties, restrictions or obligations under state or other laws" and that amended Rule G-20 would not supersede any more

[9] For example, FINRA interpretive guidance currently requires firms to aggregate all gifts given by FINRA members (and each associated person of the FINRA member) to a particular recipient over the course of a year and to state in their procedures whether the member is aggregating gifts on a "calendar year, fiscal year, or on a rolling basis beginning with the first gift to any particular recipient." Also, it requires FINRA members to value gifts at the higher of cost or face value. FINRA guidance also states that when giving gifts to multiple receipts, firms should "record the names of each recipient and calculate and record the value of the gift on a pro rata per recipient basis, for purposes of ensuring compliance with the $100 limit." *See supra* at n. 7.

restrictive provisions of state or other laws applicable to regulated entities or their associated persons. As newly regulated persons and entities, the provision would serve to caution municipal advisors that various laws and regulations may apply in addition to MSRB rules.

Additional Standard Regarding Frequency and Extensiveness of Gifts

Draft amended paragraph (d) would add the requirement that gifts not subject to the $100 limit (*e.g.*, normal business dealings, de minimis or promotional gifts) must not be "so frequent or so extensive as to raise any question of propriety or to give rise to any apparent or actual material conflict of interest." The application of the first component of this standard, pertaining to the raising of questions of propriety, would conform to the MSRB's and FINRA's current treatment of normal business dealings and the same categories of gifts. The addition of the second component regarding material conflicts of interest is consistent with the MSRB's 2007 Notice, which encourages adherence to the highest ethical standards and states that Rule G-20 was designed to "avoid conflicts of interest."[10]

Prohibition of Reimbursement for Entertainment Expenses

Draft paragraph (e) of Rule G-20 would prohibit regulated entities from requesting or obtaining reimbursement for entertainment expenses from the proceeds of an offering of municipal securities. This provision would address a regulatory gap highlighted by a recent FINRA enforcement action.[11] Specifically, the draft provision would provide that a regulated entity engaging in municipal securities or municipal advisory activities with a municipal entity is prohibited from requesting or obtaining reimbursement for expenses related to the entertainment of any person from the proceeds of the offering of such municipal securities.

The term "entertainment expenses," as used in the draft amended rule, would not include "reasonable and necessary expenses for meals hosted by the regulated entity and directly related to the offering for which the regulated entity was retained." The draft amendment would also not restrict the generally accepted market practice of a regulated entity advancing normal travel costs (*e.g.*, reasonable airfare and hotel accommodations) to an official or other personnel of a municipal entity for business travel related

[10] *See supra* at n. 6.

[11] *Department of Enforcement v. Gardnyr Michael Capital, Inc. (CRD No. 30520) and Pfilip Gardnyr Hunt, Jr.*, FINRA Disciplinary Proceeding No. 2011026664301 (Jan. 28, 2014) (concluding that while the hearing panel did not "endorse the practice of municipal securities firms seeking and obtaining reimbursement for entertainment expenses incurred in bond rating trips," neither the MSRB's rules nor interpretive guidance put the dealer on fair notice that such conduct would be unlawful).

to a municipal securities issuance, such as bond rating trips, and obtaining reimbursement for such costs. Examples of prohibited entertainment expenses would, for purposes of draft provision (e), include tickets to theater, sporting or other recreational spectator events, sightseeing tours and transportation related to attending entertainment events.

Recordkeeping Requirements for Municipal Advisors

Rules G-8 and G-9 would be amended to establish the same record keeping requirements related to Rule G-20 for municipal advisors that currently apply to dealers. As with dealers, municipal advisors would be required to make and retain records of all gifts and gratuities that are subject to the $100 limit, all agreements of employment or for compensation for services rendered, and all non-cash compensation in connection with the sale and distribution of a primary offering as described in Rule G-20.

New Defined Terms

Lastly, the draft amendments to Rule G-20 would include two new defined terms – regulated entity and person. "Regulated entity" would mean all brokers, dealers, municipal securities dealers and municipal advisors for purposes of Rule G-20. Associated persons would not be included in this new defined term. Incorporation of this term would simplify and shorten the text of the rule. "Person" would mean a natural person and codify the MSRB's existing interpretive guidance stating the same.[12]

Economic Analysis

The Board has historically given careful consideration to the costs and benefits of its new and amended rules. The Board recently adopted a policy to more formally integrate economic analysis into its rulemaking process. The policy, while in transition, can be used to guide consideration of the draft amendments. According to the policy, prior to proceeding with a rulemaking, the Board should evaluate the need for the potential rule change and determine whether the rule change as drafted, will, in its judgment, meet that need. During the same timeframe, the Board also should identify the data and other information it would need in order to make an informed judgment about the potential economic consequences of the rule change, make a preliminary identification of relevant baselines and reasonable alternatives to the rule change, and consider the potential benefits and costs of the rule change and the main alternative regulatory approaches.

[12] *See* MSRB Interpretive Letter "Person" (Mar. 19, 1980).

1. The need for the draft amendments to Rule G-20 and how the draft amendments will meet that need.

The need for the draft amendments to Rule G-20 arises primarily from the Dodd-Frank Act. As previously discussed, the Dodd-Frank Act expanded the MSRB's regulatory authority to include the oversight of and certain regulatory authority over, municipal advisors.[13] In furtherance of the mandates and purposes of the Dodd-Frank Act, the draft amendments would seek to address potential undisclosed conflicts of interest, the potential failure of municipal advisors to place the duty of loyalty to clients that are municipal entities above their own interests, and other related issues. These issues, if left unaddressed, could adversely affect the integrity of the municipal securities market, increase costs borne by issuers and investors, and negatively affect investor and public confidence.

The draft amendments would also address and minimize the improper influence, or the appearance of improper influence, exerted by some municipal advisors. Extending the current gift and non-cash compensation prohibitions to municipal advisors and their municipal advisory activities would curb or limit the receipt of gifts and non-cash compensation by such persons and thereby reduce the risk that the selection or retention of a municipal advisor would be based on improper, non-meritorious factors. Rather, the draft amendments would aim to encourage the selection of municipal advisors on their merits (*e.g.*, the quality of advice, level of expertise and services offered by the municipal advisor), availability and ability to provide such services at a price competitive with the pricing of comparable municipal advisors.

In addition, the draft amendments are necessary to reduce the occurrence of instances in which the cost of issuance or related advice may increase because municipal advisors are selected or are perceived to be selected on the basis of non-meritorious factors, or provide services in a relationship in which they exercise undue influence or as to which there are conflicts of interest. When non-meritorious factors affect the selection or retention of a municipal advisor, a variety of increased costs may be borne by the municipal entity related to the specific municipal advisory services provided. These unwarranted costs may include uncompetitive market rates for advisory services; disproportionately high costs for the services obtained relative to the quality of services provided by the municipal advisor; or the costs of receiving and acting upon advice from an unqualified, or under-qualified, municipal advisor. Also, there may be other extraordinary costs, including

[13] *See* Section 15B(a)(1)(B), (a)(5) and (b)(2) of the Exchange Act.

additional costs incurred because an unqualified or under-qualified municipal advisor requires a longer period of time to complete its assigned tasks. Moreover, in any scenario in which a regulated entity makes or is perceived to make decisions subject to undue influence or influenced by conflicts of interest, investors may question the qualifications of regulated entities retained to provide services, the integrity of the municipal entity and any specific issuance, and more broadly, the integrity of the municipal securities market. The loss of investor confidence may result in costs that will be borne by the municipal entity, including potentially, a higher cost of capital, other municipal entities, and investors in the municipal securities issued by those municipal entities.[14]

The draft amendments would also address the need to develop a regulatory regime that applies to regulated entities in a consistent and congruent manner. Currently, Rule G-20 does not apply to municipal advisors (that are not also dealers or associated persons of a dealer) nor does it cover gift giving in relation to municipal advisory activities. The draft amendments would achieve an important goal of harmonizing regulatory requirements that apply to persons operating in the same market to the extent possible, in order to enhance efficiencies and reduce costs, including the costs of compliance, and reduce the complexity of the regulatory framework, when appropriate. In addition, harmonization would create a more level playing field. Conversely, without these amendments to Rule G-20, dealer/municipal advisors could be at a competitive disadvantage compared with non-dealer municipal advisors.

The draft amendments' prohibition against the use of offering proceeds to pay certain entertainment expenses is a new provision that would apply to all regulated entities. The impetus for this amendment arises because certain regulated entities have requested or obtained reimbursement from the proceeds of an offering of municipal securities for costs and expenses for entertainment and meals that were not necessary or related to the offering of the municipal securities. The draft amendments would clarify that such conduct is inconsistent with just and equitable principles of trade.

Finally, the draft amendments are needed to curb undue influence and conflicts of interest that may arise related to this practice. The act of providing to employees of a municipal entity entertainment or certain meals, (even though the expenses of such gratuities are later reimbursed as part of offering expenses) may result in improper influence and give rise to conflicts

[14] Under Section 15B(b)(2)(C) of the Exchange Act, the MSRB is charged by Congress to adopt rules to "remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products."

of interest. As noted above, regulated entities compete with each other in several ways, including through the quality of services offered and the pricing of those services. If a dealer or a municipal advisor is selected because the dealer or municipal advisor routinely provides, for example, expensive sporting tickets or unnecessarily extravagant meals to employees or agents of a municipal entity during an underwriting, such gratuities may form the basis for their selection as dealer or municipal advisor to the municipal entity rather than the dealer's or municipal advisor's qualifications and competitive pricing. There is also a greater risk that the dealer or municipal advisor may be less qualified to provide services of the scope and quality sought by the municipal entity compared to other dealers or municipal advisors, or may provide such services at a higher cost including the costs associated with the giving of gifts and gratuities.

2. Relevant baselines against which the likely economic impact of elements of the draft amendments to Rule G-20 can be measured.

To evaluate the potential impact of the draft amendments' requirements, a baseline, or baselines, must be established as a point of reference. The analysis proceeds by comparing the expected state with the draft amendments to Rule G-20 in effect to the baseline state prior to the draft amendments taking effect. The economic impact of the draft amendments is measured as the difference between these two states.

With respect to the draft amendments, different baselines will apply depending on the business activities of each regulated entity.

For dealers that are not also engaged in municipal advisory activities, the baseline is the current Rule G-20 and the set of existing MSRB interpretations. For these entities, the draft amendments are substantially similar to the baseline Rule G-20 requirements with the exception of the new provision that prohibits the use of proceeds of an offering of municipal securities to reimburse costs and expenses related to certain entertainment provided.

For brokers, dealers, or municipal securities dealers that are also municipal advisors ("dealer/MAs"), the baseline will depend on whether and to what extent existing municipal advisory services constituted financial advisory services prior to the passage of the Dodd-Frank Act. Financial advisory services that were reclassified as municipal advisory services were governed by Rule G-20. As such the baseline for these activities is the current Rule G-20 and the set of existing MSRB interpretations. As already noted, the draft amendments are substantially similar to these baseline Rule G-20

requirements with the exception of the provision prohibiting the use of proceeds of an offering of municipal securities to reimburse costs and expenses related to certain entertainment provided.

A baseline for dealer/MAs offering any municipal advisory services that did not constitute financial advisory services and for municipal advisors that are not also dealers is the Dodd-Frank Act itself, which subjects municipal advisors to regulation by the MSRB. As discussed previously, the Dodd-Frank Act contemplated a regulatory regime for municipal advisors and municipal advisory activities that would be comparable to the regulatory regimes applicable to other participants in the securities markets. Dealer/MAs in this category, however, may have relevant Rule G-20 experience to draw upon as the scope of covered business activities of the employer of a gift recipient is extended to include the gifts in relation to an employer's municipal advisory activities.

An additional baseline applies to municipal advisors who are also registered as investment advisors and subject to the requirements of the Investment Advisers Act of 1940 ("municipal advisors/investment advisers"). Under SEC Rule 204A-1, an investment adviser must establish, maintain and enforce a code of ethics. The code of ethics must include standards of business conduct that the investment adviser requires of its supervised persons, and such standards must reflect the investment adviser's fiduciary obligations and those of the investment adviser's supervised persons.[15] Such standards may include certain topics, such as gifts, although SEC Rule 204A-1 does not specifically refer to gifts. SEC Rule 204A-1 also requires that any violation of a standard be reported promptly to the firm's chief compliance officer.[16] SEC Rule 204A-1 serves as a baseline to the extent it requires municipal advisors/investment advisers to have developed standards of business conduct that apply to gifts.
Other baselines include applicable federal, state and other anti-bribery and anti-corruption laws.

3. Identifying and evaluating reasonable alternative regulatory approaches.

One alternative to the draft amendments to Rule G-20 would be for the MSRB not to pursue these amendments, and thus, not regulate municipal

[15] 17 CFR 275.204A-1 (Investment adviser codes of ethics).

[16] *See* Investment Adviser Codes of Ethics: Release Nos. IA-2256, IC-26492; File No. S7-04-04. In addition, Rule 204-2(a) (12) and (13) of the Investment Advisers Act requires advisers to keep copies of all relevant material relating to the investment adviser code of ethics.

advisors and their associated persons, except dealer/municipal advisors, in connection with gifts and non-cash compensation. In addition, under this alternative, the MSRB would not regulate gifts given by any regulated entity in connection with the municipal advisory activities of the employer of the recipient of the gift. Similarly, under this alternative, the MSRB would not pursue the draft amendments prohibiting a regulated entity from using offering proceeds for certain entertainment expenses.

In the absence of draft amendments extending the rule to include the municipal advisory activities as a covered business category (as to the employer of a recipient of a gift), regulated entities would continue to give gifts or non-cash compensation to a person in connection with the municipal advisory activities of the employer of such gift recipient, with the result that in some instances, a more qualified or less expensive municipal advisor may not be selected, potentially leading to increased costs that would be borne by the municipal entity and investors in its municipal securities, and a reduction of revenues available to be dedicated elsewhere for the benefit of the municipal entity's taxpayers. In sum, by not adopting these draft amendments to Rule G-20, the benefits of the draft amendments could be lost.

Another alternative to the draft amendments would be for the MSRB to require municipal advisors to adopt ethics guidelines similar to those the SEC requires for investment advisers. Such a requirement would be consistent with a regulatory regime contemplated by Congress in the Dodd-Frank Act for municipal advisors that would be comparable to the regulatory regimes for other entities and persons in the financial services industry, in this case investment advisers. However, such a regulatory regime would deviate from the regulatory regime for other municipal securities professionals, such as dealers. Since other regulations for municipal advisors closely mirror regulations for other municipal securities professionals, separately mirroring an investment advisor rule to regulate a municipal advisor's provision of gifts would deviate from the broader regulatory regime that Congress anticipated, and that has been implemented or is in development for municipal advisors.

The MSRB also invites public comment to suggest regulatory alternatives.

4. Assessing the benefits and costs, both quantitative and qualitative, of the draft amendments to Rule G-20 and the main alternative regulatory approaches.

The MSRB policy on economic analysis in rulemaking addresses consideration of the likely costs and benefits of the rule with the draft amendments fully

implemented, against the context of the economic baselines discussed above.

At the outset, the MSRB notes it is currently unable to quantify fully the economic effects of the draft amendments to Rule G-20 that may be amenable to quantification, because the information necessary to provide reasonable estimates is not available.

Benefits

Based on the MSRB's preliminary review, the draft amendments to Rule G-20 are expected to yield several important direct and indirect benefits that will likely be similar to the benefits provided by Rule G-20 as it applies to dealers. One likely benefit of these draft amendments is the reduction of the potential inappropriate influence of gifts and non-cash compensation in the market for allocating the services of municipal advisors.

A benefit of the draft amendments is, compared to the baseline state, it is anticipated to be more likely that municipal advisors will be selected based on merit rather than on the provision of gifts and non-cash compensation to employees of municipal entities or obligated persons. By leveling the playing field upon which municipal advisors compete for business, the draft amendments to Rule G-20 should help minimize or eliminate the potential manipulation of the market for municipal advisory services. The resulting likely benefit to municipal entities and obligated persons will be their ability to obtain more expert, competent, experienced advice at more competitive prices. Investors in municipal bond offerings should also benefit from the draft amendments to Rule G-20 to the extent that a municipal entity that employs a municipal advisor in connection with an issuance of municipal securities may be more likely to receive higher quality municipal advisory services that are priced competitively.

The MSRB expects that the draft amendment to prohibit regulated entities from seeking or obtaining reimbursement of entertainment related expenses from offering proceeds also will yield several important direct and indirect benefits. A benefit of this draft provision is that, compared to the baseline state, it will be more likely that registered municipal securities professionals will be selected based on quality and cost, rather than on their practice of providing entertainment to persons, such as employees of a municipal entity engaged in an offering, and the improper use of offering proceeds for entertainment will be substantially reduced or will cease. The draft amendments to Rule G-20 to prohibit certain uses of offering proceeds would protect investors, municipal entities, and obligated persons from unnecessary expenses in connection with an offering where such expenses are unrelated to preparing for and conducting the offering.

Finally, by integrating MSRB and FINRA interpretive guidance into Rule G-20 the MSRB expects that regulated entities and enforcement agencies will likely realize efficiency gains. In addition, the integration of interpretive guidance will likely reduce the risk of inadvertent violations.

Costs

The MSRB's analysis of the potential costs only focuses on the incremental costs attributable to these draft amendments that exceed the baseline state. The costs associated with the baseline state are, in effect, subtracted from the costs associated with the draft rule to isolate the costs attributable to the incremental requirements of the draft rule.

The costs associated with the requirements of the draft amendments that broaden the application of Rule G-20 to municipal advisors and that broaden the scope of covered business activities to include the municipal advisory activities of the employer of a recipient of a gift will be most pronounced for municipal advisors, who will be required to implement compliance programs for the first time. These start-up costs may be significant for some regulated entities. These costs may include seeking the advice of compliance and legal professionals. In addition, once the compliance programs are implemented, regulated entities will incur recurring costs of maintaining ongoing compliance programs. Start-up compliance costs regarding these draft amendments will disproportionately affect non-dealer municipal advisors since dealer/municipal advisors should have already established compliance programs to comply with the current requirements of Rule G-20.

Relative to the baseline state, the costs associated with the requirements of the draft amendments to prohibit the use of offering proceeds for certain entertainment expenses will include the costs of implementation of compliance programs and will be borne by both dealers and municipal advisors. These start-up costs may be significant for some market participants, and may include the costs of seeking the advice of compliance and legal professionals. The marginal cost for a compliance program associated with this requirement for municipal advisors that are also implementing compliance programs necessary to meet the other requirements of Rule G-20, however, is likely to be relatively small. Once compliance programs are implemented, regulated entities will incur recurring costs of maintaining ongoing programs. The costs associated with the draft amendments to Rule G-20 may fall disproportionately on small municipal advisory firms, including sole proprietorships.

Effect on Competition, Efficiency and Capital Formation

It is possible that the costs associated with the requirements of the draft amendments to Rule G-20 relative to the baseline may lead some municipal advisors to consolidate with other municipal advisors. For example, some municipal advisors may determine to consolidate with other municipal advisors in order to benefit from economies of scale (*e.g.*, by leveraging existing compliance resources of a larger firm) rather than to incur separately the costs associated with the draft amendments to Rule G-20. However, as the SEC recognized in its final rule on the registration of municipal advisors, the market for municipal advisory services is likely to remain competitive despite the potential exit of some municipal advisors (including small entity municipal advisors), the consolidation of municipal advisors, or the lack of new entrants into the market.[17]

The MSRB does not expect that the costs associated with the requirements of the draft amendment prohibiting regulated entities from seeking or obtaining reimbursement of entertainment expenses from offering proceeds will have a significant impact on the dealers that currently participate in the municipal securities market nor will it discourage new entrants.

The efficient allocation of municipal advisory services and municipal securities business may be enhanced when the awarding of such services is based on a competition in which the factors are price, quality of performance and service, rather than on the provision of gifts or non-cash compensation, or entertainment during the course of a municipal securities offering. Regulated entities, and particularly smaller regulated entities, will be able to compete on merit rather than their ability or willingness to provide gifts or non-cash compensation or entertainment during the course of an offering of municipal securities. A merit-based competitive process may result in a better allocation of municipal advisory engagements and municipal securities business engagements, compared to the baseline state.

Since the draft amendments apply equally to all registered municipal securities entities, the MSRB does not anticipate that the draft amendments introduce any competitive disadvantages. The MSRB expects that the draft amendments may indirectly foster capital formation by bolstering investor confidence. Investors might be more likely to invest in the municipal securities market, to the extent that they know that municipal advisors providing professional services to clients have taken measures designed to place the duty of loyalty to their municipal entity clients above the municipal advisor's own interest.

[17] *See* MA Registration Adopting Release at 67608.

General Matters

In addition to any other subject which commenters may wish to address related to draft amended Rule G-20 and the draft amendments to Rules G-8 and G-9, the MSRB seeks public comment on the specific questions below. In particular, the MSRB requests public comment on the potential economic consequences that may result from the adoption of the draft amendments to Rules G-20, G-8 and G-9. The MSRB welcomes information regarding the potential to quantify likely benefits and costs. In addition, the MSRB requests comment to help identify the potential benefits and costs of any regulatory alternatives suggested by commenters. Commenters are encouraged to provide statistical, empirical, and other data that may support their views and/or support or refute the views or assumptions contained in this request for comment.

The MSRB specifically invites commenters to address the following questions:

1) How prevalent are "gift giving," entertainment practices, the use of non-cash compensation in relation to primary offerings and the other practices addressed in Rule G-20 and the draft amendments ("gift giving and other practices") involving municipal advisors in the municipal securities market? What is the effect of real or perceived gift giving and other practices involving municipal advisors on the municipal securities market? Please provide specific examples of gift giving and other practices not currently addressed in Rule G-20 or the draft amendments involving municipal advisors and that may warrant consideration.

2) Do the draft amendments strike the right balance of consistency between the treatment of dealers and municipal advisors, while appropriately accommodating for the differences between these regulated entities? If not, where are differences in treatment warranted that are not reflected in the draft amendments? Conversely, do the draft amendments overemphasize the differences between the regulated entities in a way that is not warranted or desirable?

3) Are the exceptions to the $100 limit appropriate? Should some or all of them be drafted more broadly or narrowly? Should any of them be eliminated?

4) Are the various baselines proposed to be used for the purposes of economic analysis appropriate baselines? Are there other relevant baselines that the MSRB should consider?

5) If the draft amendments were adopted, what would be the likely effects on competition, efficiency and capital formation?

6) Is the proposed extension of the provisions regarding non-cash compensation in connection with primary offerings to municipal advisors appropriate?

7) Do commenters believe that the draft amendments explicit prohibition of seeking and or obtaining reimbursement for entertainment expenses from the proceeds on an issuance of municipal securities is appropriate? Is the term, "entertainment expenses," which is defined for the purposes of this prohibition, appropriately tailored?

8) Are the recordkeeping requirements that apply to dealers in existing Rule G-20 and the analogous draft requirements that would apply to municipal advisors appropriately tailored to obtain information that is relevant for the purposes of Rule G-20? Are there additional costs or benefits to the recordkeeping obligations that the MSRB should consider?

9) What would be the effect of draft amended Rule G-20 for dealers that have instituted long-standing compliance programs? What would be the effect of draft amended Rule G-20 for dealer-municipal advisors that have instituted long-standing compliance programs? Do dealers or dealer-municipal advisors anticipate that any of the draft amendments to Rule G-20 would increase or decrease either the occurrence of, or the perception of, gift giving and other practices addressed in Rule G-20 and the draft amendments in order to obtain or retain municipal securities or municipal advisory business in the municipal securities market?

10) What alternative methods should the MSRB consider in addressing the potential for improprieties related to gift giving and other practices addressed in current Rule G-20 and the draft amendments to Rule G-20?

October 23, 2014

* * * * *

Text of Draft Amendments[18]

Rule G-20: Gifts, Gratuities, ~~and~~ Non-Cash Compensation and Expenses of Issuance

(a) *Purpose*. The purpose of this rule is to maintain the integrity of the municipal securities market and to preserve investor and public confidence in the municipal securities market, including the bond issuance process. The rule protects against improprieties and conflicts that may arise when regulated entities or their associated persons give gifts or gratuities to persons in relation to the municipal securities or municipal advisory activities of the recipients' employers.

(b)~~(c)~~ *Definitions.* For purposes of this rule, the following terms have the following meanings:

(i)~~(ii) The term~~ "~~c~~Cash compensation" ~~shall~~ means any discount, concession, fee, service fee, commission, asset-based sales charge, loan, override or cash employee benefit received in connection with the sale and distribution of municipal securities.

(ii)~~(i) The term~~ "~~n~~Non-cash compensation" ~~shall~~ means any form of compensation received in connection with the sale and distribution of municipal securities that is not cash compensation, including but not limited to merchandise, gifts and prizes, travel expenses, meals and lodging.

(iii) ~~The term~~ "~~o~~Offeror" ~~shall~~ means, with respect to a primary offering of municipal securities, the issuer, any adviser to the issuer (including but not limited to the issuer's financial advisor, municipal advisor, bond or other legal counsel, or investment or program manager in connection with the primary offering), the underwriter of the primary offering, or any person controlling, controlled by, or under common control with any of the foregoing; provided, however, that, with respect to a primary offering of municipal fund securities, "offeror" shall also include any person considered an "offeror" under ~~NASD Rule 2710, NASD Rule 2820~~ FINRA Rules 5110, 2320, or NASD Rule 2830 in connection with any securities held as assets of or underlying such municipal fund securities.

(iv) "Person" means a natural person.

(v)~~(iv) The term~~ "~~p~~Primary offering" ~~shall~~ means a primary offering as defined in Securities Exchange Act Rule 15c2-12(f)(7).

(vi) "Regulated entity" means a broker, dealer, municipal securities dealer or municipal advisor, but does not include the associated persons of such entity.

(c)~~(a)~~ *General Limitation on Value of Gifts and Gratuities*. No regulated entity or any of its associated persons ~~broker, dealer or municipal securities dealer~~ shall, directly or indirectly, give or provide or permit to be given or provided any thing or service of value, including gratuities, in excess of $100 per year to a person (other than an employee or partner of such regulated entity),~~broker, dealer or municipal securities dealer,~~ if such payments or services are in relation to the municipal securities or municipal advisory activities of the employer of the recipient of the payment or service. For purposes of this rule the term

[18] Underlining indicates new language; strikethrough denotes deletions.

"employer" shall include a principal for whom the recipient of a payment or service is acting as agent or representative.

(d)~~(b)~~ ~~*Normal Business Dealings*. Notwithstanding the foregoing, the provisions~~ *Gifts and Gratuities Not Subject to General Limitation*. The general limitation of section (c)~~(a)~~ of this rule shall not ~~be deemed~~ apply to ~~prohibit occasional~~ the following gifts ~~of meals or tickets to theatrical, sporting, and other entertainments hosted by the broker, dealer or municipal securities dealer; the sponsoring by the broker, dealer or municipal securities dealer of legitimate business functions~~, provided that they are ~~recognized by the Internal Revenue Service as deductible business expenses; or gifts of reminder advertising; provided, that such gifts shall not be~~ not so frequent or so extensive as to raise any question of propriety or to give rise to any apparent or actual material conflict of interest~~.~~:

(i) *Normal Business Dealings*. Occasional gifts of meals or tickets to theatrical, sporting, and other entertainments that are hosted by the regulated entity or its associated persons, and the sponsoring by the regulated entity of legitimate business functions that are recognized by the Internal Revenue Service as deductible business expenses.

(ii) *Transaction-Commemorative Gifts*. Gifts that are solely decorative commemorating a business transaction, such as a customary desk ornament (*e.g.*, Lucite tombstone) or plaque.

(iii) *De Minimis Gifts.* Gifts of *de minimis* value (*e.g.*, pens, notepads or modest desk ornaments).

(iv) *Promotional Gifts.* Promotional items of nominal value displaying the regulated entity's corporate or other business logo. The value of the item must be substantially below the general $100 limit to be considered of nominal value.

(v) *Bereavement Gifts.* Bereavement gifts that are reasonable and customary for the circumstances.

(vi) *Personal Gifts.* Gifts that are personal in nature (*e.g.*, a wedding gift or a congratulatory gift for the birth of a child).

(e) *Prohibition of Use of Offering Proceeds*. A regulated entity that engages in municipal securities activities or municipal advisory activities for or on behalf of a municipal entity in connection with an offering of municipal securities by such municipal entity is prohibited from requesting or obtaining reimbursement of its costs and expenses related to the entertainment of any person, including (but not limited to) any official or other personnel of the municipal entity, from the proceeds of the offering of such municipal securities. For purposes of this prohibition, entertainment expenses do not include reasonable and necessary expenses for meals hosted by the regulated entity and directly related to the offering for which the regulated entity was retained.

(f)~~(c)~~ *Compensation for Services*. The general limitation ~~Notwithstanding the foregoing, the provisions~~ of section (c)~~(a)~~ of this rule shall not apply to contracts of employment with or ~~to~~ compensation for services rendered by another person; provided, that there is in existence prior to the time of employment or before the services are rendered a written agreement between the regulated entity ~~broker, dealer or~~

~~municipal securities dealer subject to this rule~~ and the person who is to perform such services~~;~~ and ~~provided, further, that~~ such agreement includes ~~shall include~~ the nature of the proposed services, the amount of the proposed compensation~~,~~ and the written consent of such person's employer.

(g)~~(d)~~ *Non-Cash Compensation in Connection with Primary Offerings*. In connection with the sale and distribution of a primary offering of municipal securities, no ~~broker, dealer or municipal securities dealer~~ regulated entity, or any associated person thereof, shall directly or indirectly accept or make payments or offers of payments of any non-cash compensation. Notwithstanding the foregoing and the provisions of section (c)~~(a)~~ of this rule, the following non-cash compensation arrangements are permitted:

(i) - (ii) No change.

(iii) payment or reimbursement by offerors in connection with meetings held by an offeror or by a ~~broker, dealer or municipal securities dealer~~ regulated entity for the purpose of training or education of associated persons of a ~~broker, dealer or municipal securities dealer~~ regulated entity, provided that:

(A) associated persons obtain the prior approval of ~~the broker, dealer or municipal securities dealer~~ the regulated entity to attend the meeting and attendance is not preconditioned by the ~~broker, dealer or municipal securities dealer~~ regulated entity on achievement of a sales target or any other incentives pursuant to a non-cash compensation arrangement permitted by paragraph (g)(iv) ~~(d)(iv)~~;

(B) the location is appropriate to the purpose of the meeting, which shall mean an office of the offeror or the ~~broker, dealer or municipal securities dealer~~ regulated entity, a facility located in the vicinity of such office, a regional location with respect to regional meetings, or a location at which a significant asset, if any, being financed or refinanced in the primary offering is located;

(C) No change.

(D) the payment or reimbursement is not preconditioned by the offeror on achievement of a sales target or any other non-cash compensation arrangement permitted by paragraph (g)(iv) ~~(d)(iv)~~.

(iv) non-cash compensation arrangements between a ~~broker, dealer or municipal securities dealer~~ regulated entity and its associated persons, or a company that controls the ~~broker, dealer or municipal securities dealer~~ regulated entity and the associated persons of the ~~broker, dealer or municipal securities dealer~~ regulated entity, provided that:

(A) the non-cash compensation arrangement is based on the total production of associated persons with respect to all municipal securities within respective product types distributed by the ~~broker, dealer or municipal securities dealer~~ regulated entity;

(B) No change.

(C) no entity that is not an associated person of the ~~broker, dealer or municipal securities dealer~~ regulated entity participates directly or indirectly in the organization of a permissible non-cash compensation arrangement.

(v) contributions by any person other than the ~~broker, dealer or municipal securities dealer~~ regulated entity to a non-cash compensation arrangement between a ~~broker, dealer or municipal securities dealer~~ regulated entity and its associated persons, provided that the arrangement meets the criteria in paragraph (g)(iv) ~~(d)(iv)~~.

~~(e) *Definitions.*~~ - Moved to paragraph (b)

Supplementary Material

.01 Personal Gifts. A gift that is personal in nature is not subject to the general limitation in section (c) of this rule because that limitation applies only to payments or services that are in relation to the municipal securities or municipal advisory activities of the employer of the recipient. In determining whether a gift is personal in nature and not in relation to such activities of the employer of the recipient, a number of factors will be considered, including but not limited to the nature of any pre-existing personal or family relationship between the associated person giving the gift and the recipient and whether the associated person or the regulated entity with which he or she is associated paid for the gift. When a regulated entity bears the cost of a gift, either directly or by reimbursing an associated person, the gift will be presumed to be given in relation to the municipal securities or municipal advisory activities, as applicable, of the employer of the recipient within the meaning of the general limitation in section (c) of this rule.

.02 Applicability of State or Other Laws. Regulated entities and their associated persons may be subject to other duties, restrictions or obligations under state or other laws. Nothing contained in this rule shall be deemed to supersede any more restrictive provision of state or other laws applicable to the activities of regulated entities or their associated persons.

* * * * * *

Rule G-8: Books and Records to be Made by Brokers, Dealers, ~~and~~ Municipal Securities Dealers and Municipal Advisors[19]

(a) *Description of Books and Records Required to be Made*. Except as otherwise specifically indicated in this rule, every broker, dealer and municipal securities dealer shall make and keep current the following books and records, to the extent applicable to the business of such broker, dealer or municipal securities dealer:

[19] The MSRB has multiple rulemaking initiatives that would revise Rules G-8 and G-9. The markings contained in this attachment reflect the substance of the revisions related to this recommendation and technical or non-substantive changes will be made as necessary depending on the progress of this and the other rulemaking initiatives.

(i) - (xvi) No change.

(xvii) *Records Concerning Compliance with Rule G-20.* Each broker, dealer and municipal securities dealer shall maintain:

(A) a separate record of any gift or gratuity referred to in Rule G-20(c)~~(a)~~;

(B) all agreements referred to in Rule G-20(f)~~(c)~~ and records of all compensation paid as a result of those agreements; and

(C) records of all non-cash compensation referred to in Rule G-20(g)~~(d)~~. The records shall include the name of the person or entity making the payment, the name(s) of the associated person(s) receiving the payments~~s~~ (if applicable), and the nature (including the location of meetings described in Rule G-20(g)(iii) ~~(d)(iii)~~, if applicable) and value of non-cash compensation received.

(xviii) - (xxvi) No change.

(b) - (g) No change.

(h) *Municipal Advisor Records*. Every municipal advisor that is registered or required to be registered under section 15B of the Act and the rules and regulations thereunder shall make and keep current the following books and records:[20]

(i) Reserved.

(ii) *Records Concerning Compliance with Rule G-20*.

(A) a separate record of any gift or gratuity described in Rule G-20(c); and

(B) all agreements referred to in Rule G-20(f) and records of all compensation paid as a result of those agreements.

(iii) Reserved.

(iv) Reserved.

(v) Reserved.

* * * * * *

[20] Draft Rule G-8(h) includes reserved subparagraph (iii) for books and records provisions that the MSRB has proposed in connection with draft amendments to Rule G-37, subparagraph (iv) for books and records provisions that the MSRB has proposed in connection with proposed new Rule G-42, and subparagraphs (i) and (v) for books and records provisions that the MSRB has proposed in connection with proposed new Rule G-44.

Rule G-9: Preservation of Records

(a) *Records to be Preserved for Six Years*. Every broker, dealer and municipal securities dealer shall preserve the following records for a period of not less than six years:

(i) - (xiii) No change.

(xiv) Reserved.

(b) - (g) No change.

(h) *Municipal Advisor Records*.

(i) Subject to paragraphs (ii), (iii) and (iv) of this section, every municipal advisor shall preserve the books and records described in Rule G-8(h) for a period of not less than five years.

(ii) Reserved.

(iii) Reserved.

(iv) The records described in Rule G-8(h)(ii) shall be preserved for at least five years.

(i) Reserved.[21]

(j) Reserved.

(k) Reserved.

[21] Draft amended Rule G-9 includes reserved sections (i) - (k) for preservation of records, which the MSRB proposed in connection with proposed new Rule G-44.

Alphabetical List of Comment Letters on MSRB Notice 2014-18 (October 23, 2014)

1. Anonymous: Letter

2. Bond Dealers of America: Letter from Michael Nicholas, Chief Executive Officer, dated December 8, 2014

3. Chris Taylor: E-mail dated October 23, 2014

4. FCS Group: E-mail from Taree Bollinger dated October 24, 2014

5. Investment Company Institute: Letter from Tamara K. Salmon, Senior Associate Counsel, dated December 5, 2014

6. National Association of Municipal Advisors: Letter from Terri Heaton, President, dated December 8, 2014

7. PFM Group: Letter from Joseph J. Connolly, Counsel, dated November 7, 2014

8. Securities Industry and Financial Markets Association: Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, dated December 8, 2014

MSRB Proposed G-20 Comments

The comments below are submitted on behalf of a registered investment adviser (RIA) that is also a municipal advisor (MA) and are provided in response to specific MSRB questions raised in Regulatory Notice 2014-18. The comments relate mostly to how the proposal would affect an RIA that is also an MA (RIA-MA).

1) How prevalent are "gift giving," entertainment practices, the use of non-cash compensation in relation to primary offerings and the other practices addressed in Rule G-20 and the draft amendments ("gift giving and other practices") involving municipal advisors in the municipal securities market? What is the effect of real or perceived gift giving and other practices involving municipal advisors on the municipal securities market? Please provide specific examples of gift giving and other practices not currently addressed in Rule G-20 or the draft amendments involving municipal advisors and that may warrant consideration.

The practices described in Proposed Rule G-20 are substantially limited, if not completely prohibited, by municipal government ethics rules in many jurisdictions in the United States. In the case of an RIA-MA, the practices addressed in Rule G-20 are already completely prohibited: An RIA-MA is acting as both an RIA and an MA when providing MA services, so RIA rules apply. Except for bona fide employees or contractors, SEC regulations strictly prohibit RIAs from transferring anything of any value whatsoever to anyone "for the purpose of obtaining or retaining a [government] client for… an investment adviser." 17 C.F.R. § 275.206(4)-5(a)(2)(i), (f)(10).

However, as to other MAs who are not subject to strict RIA regulation, the gift giving and other practices proposed to be allowed in this rule could have a negative effect on the actual or perceived integrity of the municipal securities market.

2) Do the draft amendments strike the right balance of consistency between the treatment of dealers and municipal advisors, while appropriately accommodating for the differences between these regulated entities? If not, where are differences in treatment warranted that are not reflected in the draft amendments? Conversely, do the draft amendments overemphasize the differences between the regulated entities in a way that is not warranted or desirable?

No comment.

3) Are the exceptions to the $100 limit appropriate? Should some or all of them be drafted more broadly or narrowly? Should any of them be eliminated?

The exceptions generally appear to be tailored to limiting conflict or the appearance of conflict and to allow appropriate social interaction with actual or potential business associates. However, the proposed financial limits are potentially incompatible with existing rules that apply to many

MAs, and are set at an inappropriate level to limit actual or perceived influence on issuer officials or personnel.

As noted above, regulations already completely prohibit RIA-MAs from transferring anything of any value whatsoever to "any person to solicit a government entity" "for the purpose of obtaining or retaining a client for… an investment adviser." Thus, generally, for RIA-MAs, even the $100 limit is irrelevant, because the effective limit on RIA gifts to government officials or personnel is $0. This is because "payment" is defined as "any gift, subscription, loan, advance, or deposit of money or anything of value," and there is no *de minimis* exception to this prohibition. 17 C.F.R. § 275.206(4)-5(f)(7).

The federal government and many states and localities limit gifts to government officials and employees to a value of $20 or less per gift, up to a maximum of $50 per year from the same person or organization. Thus, if the MSRB moves forward with this proposal, we suggest that the MSRB consider mirroring these limits to help level the playing field among all types of MAs and attain broader compatibility with existing federal, state, and local law.

4) Are the various baselines proposed to be used for the purposes of economic analysis appropriate baselines? Are there other relevant baselines that the MSRB should consider?

The proposed baselines may be appropriate for some MAs who engage exclusively in MA activities in jurisdictions with no regulation of gift-giving to issuers and their officials, but for RIA-MAs, additional regulation would impose undue burdens on RIA-MAs whose baseline for gift giving activities is already zero.

5) If the draft amendments were adopted, what would be the likely effects on competition, efficiency and capital formation?

The SEC already regulates RIAs and collects extensive information from RIAs, so the proposed rules may needlessly increase the compliance burden on RIA-MAs. Additionally, because the SEC enforces MSRB rules, the proposed rules would also increase the enforcement burden on the SEC, if RIA-MAs would be required to maintain separate sets of records containing identical information.

The increased regulatory burden on RIA-MAs could cause some experienced and reputable MAs to withdraw from the market, leaving behind MAs who are not subject to strict RIA gift-giving restrictions.

The increased compliance burden would increase costs for those remaining MAs, and thus likely decrease the number of regulated entities and cause those regulated entities to increase fees, which would reduce competition and raise costs for issuers.

6) Is the proposed extension of the provisions regarding non-cash compensation in connection with primary offerings to municipal advisors appropriate?

Yes, the proposed extension is appropriate.

7) Do commenters believe that the draft amendments explicit prohibition of seeking and or obtaining reimbursement for entertainment expenses from the proceeds on an issuance of municipal securities is appropriate? Is the term, "entertainment expenses," which is defined for the purposes of this prohibition, appropriately tailored?

This restriction would be inappropriate as drafted. Although the intent is clearly stated in the preamble, i.e., to limit unnecessary expenses of a regulated entity and to minimize actual or apparent undue influence on issuers, the proposed rule itself is drafted more broadly than necessary to achieve those goals.

For RIA-MA firms, the proposed limitation would be unnecessarily restrictive and potentially detrimental to other business: Assume at firm F, Individual A is an investment adviser who advises commercial clients on private-sector equity securities. Individual M engages in municipal advisor activities, and secures compensation for F from fees earned from advising on municipal offerings. M and A have no clients in common; M and A do not even know each other's names, and may work on opposite sides of the country. Nevertheless, A would be prohibited from being reimbursed by F for the entirely appropriate business expense of taking a prospective commercial client to lunch, even if the prospective client and A have no direct or indirect connection whatsoever with M's municipal advisory activities, because some portion of the reimbursement for these "entertainment expenses" would be attributable to the "proceeds" of an offering. This could not be the kind of activity the MSRB intends to prevent.

To ensure that the MSRB's apparent intent is reflected in any future rule, and to ensure that the prohibition is at least rationally connected to the activity it is apparently attempting to prevent, (i.e., MAs obtaining reimbursement in excess of earned fees for inappropriate staff expenses or unduly influencing municipal officials with lavish meals financed by securities issued at taxpayer expense), we suggest that the MSRB consider rewriting proposed G-20(e) to clarify that the prohibition is not intended to unnecessarily restrict how a regulated entity may appropriately use its fees properly earned from the proceeds of an offering.

8) Are the recordkeeping requirements that apply to dealers in existing Rule G-20 and the analogous draft requirements that would apply to municipal advisors appropriately tailored to obtain information that is relevant for the purposes of Rule G-20? Are there additional costs or benefits to the recordkeeping obligations that the MSRB should consider?

The information is relevant, but for RIA-MAs, the documentation requirements in proposed G-8(h) are unnecessary because RIAs are already required to keep such records under 17 C.F.R. § 275.206(4)-3. Thus, we suggest that the MSRB consider exempting RIA-MAs from the requirements of proposed G-8(h).

9) What would be the effect of draft amended Rule G-20 for dealers that have instituted long-standing compliance programs? What would be the effect of draft amended Rule G-20 for dealer-municipal advisors that have instituted long-standing compliance programs? Do dealers or dealer-municipal advisors anticipate that any of the draft amendments to Rule G-20 would increase or decrease either the occurrence of, or the perception of, gift giving and other practices addressed in Rule G-20 and the draft amendments in order to obtain or retain municipal securities or municipal advisory business in the municipal securities market?

No comment.

10) What alternative methods should the MSRB consider in addressing the potential for improprieties related to gift giving and other practices addressed in current Rule G-20 and the draft amendments to Rule G-20?

As an alternative to proposed G-20, with regard to MA activities, to ensure that RIA-MAs are not unduly disadvantaged by the ability of non-RIA MAs to give gifts, we suggest that the MSRB consider two alternatives:

1) Simply incorporate 17 C.F.R. § 275.206(4)-5 into Rule G-20 and clarify that it also applies to MA activities of any regulated entity: For RIA-MAs, Rule 206(4)-5 already does apply in that manner, so there would be little or no impact on RIA-MAs, and all MAs would be subject to the same rules. Furthermore, a simple incorporation and application of 17 C.F.R. § 275.206(4)-5 would reduce duplicative rulemaking and regulatory compliance activities so that there is a clear set of rules to apply whenever a government entity is involved in any kind of investment advisory activity. This would also increase regulatory certainty for all issuers and entities involved in MA activity.
2) Alternatively, assuming the MSRB incorporates the above-suggested amendments to proposed rules G-20(c), (d), (e), and G-8(h), we suggest that the MSRB consider recommending to the SEC that it adjust Rule 206(4)-5 to be more compatible with proposed rule G-20 as to MA activities of RIA-MAs.

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December 8, 2014

VIA ELECTRONIC MAIL

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

RE: MSRB Regulatory Notice 2014-18: Request for Comment on Draft Amendments to MSRB Rule G-20, on Gifts, Gratuities and Non-Cash Compensation, to Extend its Provisions to Municipal Advisors (October 23, 2014)

Dear Mr. Smith:

On behalf of the Bond Dealers of America ("BDA"), I am pleased to submit this letter in response to Municipal Securities Rulemaking Board ("MSRB") Regulatory Notice 2014-18 (the "Notice"), requesting comment on draft amendments to MSRB Rule G-20 on gifts, gratuities and non-cash compensation to extend its provisions to municipal advisors. BDA is the only DC based group representing the interests of middle-market securities dealers and banks focused on the United States fixed income markets and we welcome this opportunity to present our comments on this Notice.

The BDA generally supports extending the provisions in Rule G-20 regarding gifts, gratuities and non-cash compensation to municipal advisors and applying recordkeeping requirements to municipal advisors to which dealers already adhere. Dealers already have long-standing compliance programs in place which cover similar pay-to-play requirements to those in the Notice and we appreciate that previously unregulated municipal advisors will now fall under the same regulatory umbrella. Extending Rule G-20 to municipal advisors would promote a level-playing field in the marketplace and serve as an appropriate balance of consistency in regulation between dealers and municipal advisors. The draft amendments should also serve to decrease actual and perceived inappropriate gift-giving and result in more transparency among all market participants, promoting further investor protections and increasing the transparency and integrity of the municipal market.

However, we have some concerns regarding certain language contained within the proposed amendments. We are concerned that the provision prohibiting reimbursement of entertainment expenses leaves too much room for interpretation and lacks clarity regarding the type of expenses that constitute "entertainment expenses" versus expenses that constitute "normal and necessary meals" and "normal travel costs." We suggest that meals with clients are generally a standard part of travel and should be treated separately from things like event tickets, which are clearly entertainment. Alternatively, should the MSRB decide not to identify the clarification in the rule, the BDA requests that the MSRB consider crafting interpretive guidance to clarify this issue. We encourage the MSRB to utilize the BDA for assistance in providing and addressing certain types of examples of scenarios which may present themselves in a real world transaction.

Additionally, the BDA disagrees with the approach under the draft amendments that establishes different recordkeeping requirements for non-dealer municipal advisors than those for dealers. We suggest that the draft amendments to MSRB Rule G-9 regarding recordkeeping requirements should be the same for non-dealer municipal advisors and broker dealers. We do not see a logical reason for the difference in record retention timeframes for dealers and municipal advisors. Two different sets of recordkeeping requirements will only create confusion for compliance officers and examiners by setting two different standards. Therefore, we encourage the MSRB to either reduce the dealer recordkeeping requirement to five years for dealer firms or extend the same requirement for maintenance of records to six years for municipal advisors.

Thank you again for the opportunity to submit these comments.

Sincerely,

Michael Nicholas
Chief Executive Officer

Comment on Notice 2014-18

from chris taylor,

on Thursday, October 23, 2014

Comment:

I can think of no reason why the prohibition should not be extended to municipal advisors. It would help to insure the integrity of the process.
Chris

Comment on Notice 2014-18

from Taree Bollinger, FCS GROUP

on Friday, October 24, 2014

Comment:

Rule G-8 (b) ii (A) states that a separate record of any gift or gratuity "described" in Rule G-20 must be kept. Does this include gifts that are excluded by Rule G-20. Please clarify "described".

The way that Rule G-8 (b) ii (B) is written it could be interpreted that a log must be kept of every contract we enter into for municipal advisory services whether or not any gifts are given. It that correct?

We have in the past reduced our prices for providing municipal advisory consulting services in exchange for the associated person providing a joint presentation of the results with us at a regional trade show. Would such activity be regulated by Rule G-20?

INVESTMENT COMPANY INSTITUTE

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December 5, 2014

Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

Re: Proposed Amendments to Rule G-20, Relating to Gifts and Gratuities

Dear Mr. Smith:

The Investment Company Institute[1] appreciates the opportunity to comment on amendments proposed by the Municipal Securities Rulemaking Board (MSRB) to Rule G-20, which governs gifts, gratuities, and non-cash compensation that may be given or paid by brokers, dealers, and municipal securities dealers.[2] While the amendments, in large part, are intended to expand the scope of the current rule to include municipal advisors, the proposal also would codify in the rule interpretive guidance and positions previously taken by the MSRB and FINRA.[3] As discussed below, we recommend that, prior to adopting this proposal, the MSRB revise it to address concerns relating to promotional gifts to better align the MSRB's rule with FINRA's comparable rule. This approach better

[1] The Investment Company Institute (ICI) is the world's leading association of regulated funds, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI's U.S. fund members manage total assets of $17.4 trillion and serve more than 90 million U.S. shareholders.

[2] *See Request for Comment on Draft Amendments to MSRB Rule G-20, on Gifts, Gratuities, and Non-Cash Compensation, to Extend its Provisions to Municipal Advisors,* MSRB Notice 2014-18 (October 23, 2014) ("MSRB Notice").

[3] We note that, while the MSRB Notice mentions FINRA Rule 3220, which governs "Influencing or Rewarding the Employees of Others," it fails to mention FINRA Rule 2830(l)(5), which is the FINRA rule governing non-cash compensation arrangements involving investment company securities. Because of the similarity of 529 plan securities and investment company securities, we believe that the MSRB Notice should additionally reflect consideration of the provisions of Rule 2830(l)(5) as discussed more specifically in our letter.

ensures compliance by those persons that are both registered with the MSRB as a municipal securities dealer and with FINRA as a broker-dealer. We also recommend that the MSRB monitor FINRA's ongoing retrospective rule review to determine whether any further revisions to Rule G-20 may become necessary to align Rule G-20 with FINRA's rules where appropriate.

I. RULE G-20'S EXCEPTION FOR PROMOTIONAL GIFTS

A. Value "Substantially Below" $100

As proposed, Rule G-20(a) would continue to prohibit a regulated entity or its associated persons from giving "any thing or service of value, including gratuities, in excess of $100 per year to a person . . . if such payments or services are in relation to the municipal securities or municipal advisory activities of the employer of the recipient of the payment or service." Subsection G-20(d) provides exceptions from this general prohibition, including an exception for "promotional gifts," which is found in subdivision (d)(iv). The MSRB has proposed to limit this exception to those promotional gifts that are valued "*substantially below* the general $100 limit." [Emphasis added.] We are concerned that the rule's proposed use of the terminology "substantially below" is vague and therefore, if adopted, would create compliance challenges. Of particular concern is that the rule's ambiguity will permit the MSRB, through enforcement and regulatory actions, to second-guess a registrant's good faith compliance efforts to distribute only those promotional items that meet the rule's standard. Such a result seems patently unfair and can be remedied by eliminating the "substantially below" language from the final rule. This approach would also better align the language of the MSRB's rule with FINRA Rule 2930(l)(5), thereby facilitating registrants' compliance with such rules.

B. Logos of Non-Regulated Entities

By its terms, Rule G-20 governs a regulated entity's use of promotional gifts that carry the regulated entity's logo. As such, the rule would not appear to be triggered when a regulated entity utilizes promotional items that do not promote its brand or logo. This seems wholly consistent with the policy behind this provision, which is to place limits on regulated entities giving gifts that promote their brand or business. With respect to 529 plans, however, it is not uncommon for distributors of the plan that are regulated entities to use promotional gifts that display the *plan's logo* and not the regulated entity's logo. To make clear that Rule G-20 does not apply in such instances, we recommend that the MSRB clarify that promotional gifts that contain only the brand or logo of the plan and not that of a regulated entity are not subject to the restrictions of Rule G-20(c) and need not, therefore, rely on the exception in Rule G-20(d)(iv) for promotional gifts.

II. ALIGNMENT WITH FINRA'S RULES

Finally, the Institute continues to support the MSRB's efforts to align its rules, to the extent practicable, with those of FINRA. Such alignment facilitates compliance for those regulated entities that are subject to the jurisdiction of both self-regulatory organizations. Our comments above are intended to better align Rule G-20 with FINRA's comparable rules, including Rule 2830(l)(5), which was not mentioned in the MSRB's Notice. Towards this same end, we recommend that the MSRB monitor FINRA's ongoing retrospective of its rules relating to gift, gratuities, and non-cash compensation.[4] The Institute has been engaged with FINRA on this initiative, both through filing a comment letter as well as by meeting with the FINRA staff to discuss our members' recommendations and concerns with the current rule. While the timing and next steps of this initiative are unknown, to the extent it results in substantive amendments to FINRA's rules, we recommend that the MSRB review such changes and, where appropriate, consider revising its rules accordingly.

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We appreciate the opportunity to offer these comments on the MSRB's proposal. If you have any questions concerning them or would like additional information regarding our views, please contact the undersigned by phone (202-326-5825) or email (tamara@ici.org).

Regards,

/s/

Tamara K. Salmon
Senior Associate Counsel

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[4] In particular, in April 2014, FINRA published a notice that both announced its retrospective review of the FINRA rules that govern gifts, gratuities, and non-cash compensation and sought comment on such rules. According to FINRA's Notice regarding this initiative, FINRA's review is being conducted "to determine whether a FINRA rule or rule set is meeting its intended investor-protection objectives by reasonably efficient means." This initiative includes "a review not only of the substance and application of a rule or rule set, but also FINRA's processes to administer the rules . . . to ensure that [such rules] remain relevant and appropriately designed to achieve their objectives, particularly in light of environmental, industry, and market changes." Included in the rules being reviewed as part of this initiative are FINRA Rules 3220 (Influencing or Rewarding the Employees of Others) and 2830(l)(5), which relates specifically to investment company securities. *See Retrospective Rule Review,* FINRA Notice 14-15 (April 2014) ("FINRA's Notice").

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December 8, 2014

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Re: MSRB Notice 2014-18 Draft Amendments to MSRB Rule G-20, on Gifts, Gratuities and Non-Cash Compensation, to Extend its Provisions to Municipal Advisors

Dear Mr. Smith:

The National Association of Municipal Advisors ("NAMA") appreciates this opportunity to provide comments to the Municipal Securities Rulemaking Board ("MSRB") on the proposed amendments to MSRB Rule G-20 to extend its provisions to municipal advisors.

On October 9, 2014, the National Association of Independent Public Finance Advisors ("NAIPFA") membership voted to amend its By-Laws and change its name from NAIPFA to the National Association of Municipal Advisors ("NAMA"). A primary focus of the historic change is expansion of membership categories to include all Municipal Advisors. Like its predecessor organization, NAMA will continue to be an organization of firm members, but the new organization provides for the membership of all registered Municipal Advisors in good standing with the SEC and the MSRB.

General Comment

In principle, NAMA supports any rule that bans or curtails the ability of regulated entities to influence a municipal entity's decision-making process through gifts, political contributions, entertainment or the like. NAMA welcomes the proposed amendments to Rule G-20 (the "Rule"), which attempts to limit the practice of gaining influence through the use of gifts and gratuities. However, NAMA believes that the Rule does not go far enough and leaves open many opportunities for abuse and, therefore, should be further amended. In addition, certain aspects of the Rule, and in particular the incorporation of FINRA guidance need additional clarification.

Comments on Specific Aspects of the Proposed Rule

Definitions

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The term "municipal securities activities" is not defined.

Proposed Rule G-20(c)

This general limitation is confusingly written because it purports to apply only to gifts or gratuities that relate to the "municipal securities or municipal advisory activities" of the "employer of the recipient." For the most part, municipal entities and obligated persons do not engage in either "municipal advisory activities" as defined by MSRB Rule D-13 or to municipal securities business as proposed to be defined by MSRB Rule G-37 and therefore it appears that the rule would not apply to gifts given to employees or officials of municipal entities or obligated persons. This language needs to be changed.

Proposed Rule G-20(d)

Under proposed Rule G-20(c), regulated entities may give gifts and gratuities that have a value up to $100 per year. However, the proposed Rule G-20(d) allows for many different types of gifts that are not subject to the $100 limit. Most notably, proposed Rule G-20(i) states that "occasional gifts" of things such as "meals or tickets to theatrical, sporting or other entertainments" are exempt from the $100 per year per person cap. By exempting items such as meals and tickets to theatrical, sporting and other entertainment events, the MSRB leaves open a plethora of opportunities for abuse particularly because the associated books and records requirement does not even require that regulated entities maintain records of gifts provided under proposed Rule G-20(d). Although the proposed Rule limits the meals and tickets that may be provided by the qualifying term "occasional", and further states that such gifts may not be so "frequent or extensive as to raise any question of propriety or to give rise to any apparent or actual material conflict of interest," the proposed rule and the associated recordkeeping requirements do not provide any effective mechanism for ensuring that is the case. Thus, the possibility exists that at any given time an individual could receive gifts and gratuities well in excess of $100. For example, a $100 item could be given as a gift to a municipal official, while such official is sitting down for an expensive dinner with a regulated entity after having been treated to 18 holes of golf by that regulated entity. The aggregate value of the gift, meal and entertainment given to this individual would be well in excess of the $100 limit **but would be acceptable** under the Rule and the most expensive items would not even have to be reported nor would records have to be maintained. The potential for pay-to-play is further enhanced by the fact that this individual could be the recipient of additional meals and entertainment throughout the year. The effect of this reality is that regulated entities that are willing to provide gifts and gratuities exempt from the $100 per year per person limit, will likely be able influence decisions without violating the Rule.

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Accordingly, because of the likelihood that pay-to-play has occurred under current Rule G-20 and will continue to occur under the proposed amendments to Rule G-20, NAIPFA proposes that the MSRB include additional Supplementary Material with respect to proposed Rule G-20(d(i) which states:

"Supplementary Material

.03 **Normal Business Dealings.** Occasional gifts of meals or tickets to theatrical, sporting, and other entertainments that are hosted by the regulated entity or its associated persons, and the sponsoring by the regulated entity of legitimate business functions that are recognized by the Internal Revenue Service as deductible business expenses will be presumed to be so extensive as to raise a question of propriety if they exceed [$250] in any year in conjunction with any gifts or gratuities provided under MSRB Rule G-20(c)."

NAMA believes that an effective aggregate gift and gratuities total of [$250] per year per person, when incorporating gifts of meals or tickets to theatrical, sporting, and other entertainments that are hosted by the regulated entity or its associated persons, will strike the appropriate balance and will address NAMA's and the MSRB's desire to limit pay-to-play. In addition, the suggested $250 limit is consistent with the approach taken by the MSRB in drafting Rule G-37, which limits contributions to individuals seeking elected office to $250 if the contributor is able to vote for the individual seeking office. Unlike proposed Rule G-20, which places a low dollar threshold on gifts and gratuities while allowing generous and plentiful exclusions, Rule G-37 places a clear limit of $250 on contributions. The MSRB has determined that a $250 contribution limit is appropriate because it addresses the needs of individuals seeking to give political contributions while not allowing those contributions to be so excessive as to allow the contributor to gain undue influence. Since the purpose of Rule G-20 and the purpose of G-37 are united in their attempt to limit a dealer's or a municipal advisor's ability to gain undue influence through gifts and gratuities, or contributions (i.e., pay-to-play), NAMA believes that the rules should be written similarly. In addition, the gifts and gratuities at issue in Rule G-20 do not enjoy the same level of free speech protection as the political contributions that are limited by MSRB Rule G-37. Therefore, because the MSRB has already determined that a $250 cap is appropriate to curtail abuses relating to political contribution, and because current Rule G- 20 allows for gifts and gratuities well in excess of $100 and even in excess of $250, proposed Rule G-20 should be amended accordingly.

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Recordkeeping Requirements

These rules should be amended to require maintenance of any gift or gratuity referred to in Rule G-20(c) or Rule G-20(d)(i) regardless of whether the MSRB adopts the $250 limitation proposed by NAMA. Because gifts included in Rule G-20(d)(i) are required to be recognized as legitimate business expenses by the IRS and because certain municipal entities (such as municipal entities in California) require recordkeeping regarding such gifts, the imposition of a recordkeeping requirement with respect to such gifts would not be an entirely new burden and, importantly, would provide meaningful protection against pay-to-play activity as well as providing a meaningful way for regulators to determine whether such gifts give rise to questions of impropriety or conflicts of interest. Again, in order to provide for meaningful enforcement, the MSRB should also require a regulated entity to keep records of any gifts given pursuant to proposed Rule G-20(d)(vi) that were paid for, directly or indirectly, by the regulated entity.

Incorporation of FINRA Interpretive Guidance and Amendment of MSRB Interpretive Guidance

NAIPFA appreciates the MSRB's efforts to streamline and incorporate existing MSRB and FINRA guidance into the proposed amendments to MSRB Rule G-20. However, in Regulatory Notice 2014-18, the MSRB did note that "[o]there MSRB guidance, and portions of applicable FINRA interpretive guidance that are not codified by the draft amendments, would continue to be applicable to the comparable provisions of Rule G-20.

As the MSRB is aware, the majority of registered municipal advisors are not FINRA members and are not required to be FINRA members. In addition, unlike the more user-friendly MSRB website, the FINRA website does not clearly link interpretive guidance to its existing rules and tracking down guidance to NASD Rule 3060 (now FINRA Rule 3220) is not an easy task. Finally, non-FINRA member municipal advisors would not have notice of further changes to such interpretive guidance.

Therefore, NAIPFA believes that the MSRB should clearly state which existing FINRA guidance applies to Rule G-20 by explicitly incorporating it as MSRB guidance under these amendments to Rule G-20. Regulated entities (and particularly non-FINRA members) should not have to pick through the history of FINRA interpretive guidance in order to determine what interpretive guidance is applicable to MSRB Rule G-20. NAMA is sympathetic to those registered municipal advisors that must also comply with FINRA Rule 3220 and recognizes the value of harmonization of interpretive guidance in that regard. However, the MSRB has a unique opportunity at this moment to make such

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harmonization more concrete while also not posing an undue regulatory burden on non-FINRA members. Going forward, the MSRB and FINRA could proceed on parallel tracks with respect to further interpretive guidance on MSRB Rule G-20 and FINRA Rule 3220 to the extent it was warranted but MSRB Rule G-20 should no longer incorporate FINRA interpretive guidance by reference – it should affirmatively adopt the guidance in order to provide clarity to all regulated entities.

Responses to Specific Questions Posed by the MSRB

1) *How prevalent are "gift giving," entertainment practices, the use of non-cash compensation in relation to primary offerings and the other practices addressed in Rule G-20 and the draft amendments ("gift giving and other practices") involving municipal advisors in the municipal securities market? What is the effect of real or perceived gift giving and other practices involving municipal advisors on the municipal securities market? Please provide specific examples of gift giving and other practices not currently addressed in Rule G-20 or the draft amendments involving municipal advisors and that may warrant consideration*.

NAMA respectfully requests that further guidance and clarification be made with regard to charitable contributions that are made either (i) as a result of a solicitation from an employee or elected official of a municipal entity, or (ii) with a view toward influencing the decision- making of an employee or elected official of a municipal entity.

2) Do the draft amendments strike the right balance of consistency between the treatment of dealers and municipal advisors, while appropriately accommodating for the differences between these regulated entities? If not, where are differences in treatment warranted that are not reflected in the draft amendments? Conversely, do the draft amendments overemphasize the differences between the regulated entities in a way that is not warranted or desirable?

NAMA believes that, in general, the draft amendments strike the right balance of consistency between the treatment of dealers and municipal advisors subject to the concern expressed above about the incorporation by reference of FINRA guidance with respect to FINRA Rule 3220 (former NASD Rule 3060). The MSRB could achieve the same goal of harmonization for FINRA-member dealers without unduly and unfairly adding to the regulatory burden for non-FINRA member advisors by explicitly adopting all of the previously issued FINRA guidance that it intends to adopt.

3) Are the exceptions to the $100 limit appropriate? Should some or all of them be drafted more broadly or narrowly? Should any of them be eliminated?

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As noted above, NAIPFA believes that the exception for normal business dealings is too broad and provides ample opportunity for abuse, particularly because no records are required to be kept with respect to those contributions.

4) *Are the various baselines proposed to be used for the purposes of economic analysis appropriate baselines? Are there other relevant baselines that the MSRB should consider?*

No comment.

5) *If the draft amendments were adopted, what would be the likely effects on competition, efficiency and capital formation?*

If the draft amendments were adopted, particularly with the amendments recommended by NAMA, there would be a positive effect on competition, efficiency and capital formation because all regulated entities would be subject to the same rules and the rules would appropriately protect against improper influence that can lead to inefficient capital formation by municipal entities and obligated persons.

6) *Is the proposed extension of the provisions regarding non-cash compensation in connection with primary offerings to municipal advisors appropriate?*

This extension would appear to be inapplicable to the activities of municipal advisors that are not dealers and therefore does not appear to be needed.

7) *Do commenters believe that the draft amendments explicit prohibition of seeking and or obtaining reimbursement for entertainment expenses from the proceeds on an issuance of municipal securities is appropriate? Is the term, "entertainment expenses," which is defined for the purposes of this prohibition, appropriately tailored?*

The portion of the draft amendments prohibiting seeking or obtaining reimbursement for entertainment expenses is definitely appropriate and furthers the intent of the proposed Rule. In this case the definition of entertainment expenses might more appropriately be tied to necessary expenses for meals that comply with the expense guidelines of the municipal entity for their personnel (and any amounts in excess of that would not be reimbursable and would be subject to the limitations suggested above).

8) *Are the recordkeeping requirements that apply to dealers in existing Rule G-20 and*

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the analogous draft requirements that would apply to municipal advisors appropriately tailored to obtain information that is relevant for the purposes of Rule G-20? Are there additional costs or benefits to the recordkeeping obligations that the MSRB should consider?

As noted above, the fact that recordkeeping requirements do not extend to gifts and gratuities under proposed Rule G-20(d)(i) means that regulators would not an effective way to determine whether such gifts raise questions as to propriety or material conflict of interest.

9) *What would be the effect of draft amended Rule G-20 for dealers that have instituted long-standing compliance programs? Do dealers or dealer-municipal advisors anticipate that any of the draft amendments to Rule G-20 would increase or decrease either the occurrence of, or the perception of, gift giving and other practices addressed in Rule G-20 and the draft amendments in order to obtain or retain municipal securities or municipal advisory business in the municipal securities market?*

No comment.

10) *What alternative methods should the MSRB consider in addressing the potential for improprieties related to gift giving and other practices addressed in current Rule G-20 and the draft amendments to Rule G-20?*

As noted above, the MSRB should provide specific limitations on the aggregate amount of gifts and gratuities permitted pursuant to Rule G-20(c) and Rule G-20(d)(i) and should require recordkeeping with respect to gifts given pursuant to Rule G-20(d)(i) regardless of whether the limits proposed by NAMA are adopted.

Conclusion

The MSRB acknowledges that its mandate now extends to the "protection of municipal entities". NAMA believes that this new mandate is the key to constructing amendments to Rule G- 20. If the practices of prior Rule G- 20 are allowed to continue (i.e., if firms and individuals are allowed to continue to give gifts and gratuities far in excess of other monetary limits ($250) that have been recognized to have a corrupting influence (see MSRN Rule G-37) as long as they are characterized as "normal business dealings"), the MSRB will fail in its attempt to fulfill its mandate. When employees and elected officials make business decisions that are not based on matters such as qualifications or cost, and instead based on who has given the most lavish gift or gratuity, it is the municipal entity

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itself and its tax and rate payers that ultimately suffer. Therefore, the MSRB must seek to limit the likelihood that business decisions will be made based on the gifts and gratuities received by employees and elected officials of a municipal entity.

NAMA once again expresses its appreciation for the opportunity to submit its views on the MSRB's proposed Rule G-20. Please feel free to contact me if you have any questions or if further clarification of NAMA's comments is necessary.

Sincerely,

Terri Heaton, CIPFA
President, National Association of Municipal Advisors

cc:

The Honorable Mary Jo White, Chair,
The Honorable Luis A. Aguilar, Commissioner,
The Honorable Daniel M. Gallagher, Commissioner
The Honorable Kara Stein, Commissioner
The Honorable Michael Piwowar, Commissioner
Jessica Kane, Deputy Director, SEC Office of Municipal Securities
Lynnette Kelly, Executive Director, Municipal Securities Rulemaking Board

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November 7, 2014

Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

Attention: Ronald Smith
Corporate Secretary

RE: MSRB Notice 2014-18
(Rules G-20, G-8 and G-9)

Dear Members:

The Municipal Securities Rulemaking Board ("Board") has requested comments to draft amendments of Rules G-20, G-8 and G-9 as set forth in Notice 2014-18.

Consistent with PFM's April 5, 2011 submission in response to Notice 2011-16, PFM has no comment with respect to proposed amendments which would extend the coverage of Rule G-20 to municipal advisors.

The promulgation of amendments to Rule G-20 is, we believe, an occasion for the Board to consider whether the reach of the "general limitation" of paragraph (c) of the Rule is satisfactory. Under the formula created by the Board to identify the recipients of payments subject to the restriction of paragraph (c), there appears to be a significant omission of elected officials of state and local governments. Such officials (and perhaps numerous appointed officials) often have authority to influence the selection of underwriters and municipal advisors but are not "employees" of the government in any generally used construction of that term. If the Board has made a deliberate choice to exempt gifts to elected officials -- at the same time as it maintains an extensive structure to limit election-related contributions -- the Board has not explained the decision to create that disparity.

We also repeat the objection we submitted in 2011 to the proposed amendment of Rule G-8 to add paragraph (h)(ii), which would require municipal advisors perhaps to create and certainly to maintain "all agreements referred to in Rule G-20(f)" (emphasis added). This proposed amendment results in an unsupportable, and perhaps unintended, burden on municipal

advisors due to the fact that proposed Rule G-20(f) does not describe a restricted transaction but is solely an exemptive provision. There will be an unknowable number of instances in which a municipal advisor engages a service provider in circumstances which fit the characteristics "referred to" in paragraph (f) but which have nothing whatever to do with municipal securities activities. For example, if a municipal advisor engages an employee of a plumbing contractor to perform periodic maintenance of its galley and washroom fixtures, that is a transaction which squarely fits within (or is "referred to ") in proposed Rule G-20(f). But that activity is not within the scope of federal regulation of securities or the Board's authority. None of the policies to be advanced by the Board's instant proposals is brought into play by the innumerable commercial transactions of a regulated person that have no "relation" to municipal securities activities. In the above hypothetical, the municipal advisor may or may not document the maintenance engagement by a written contract. But however the municipal advisor conducts its affairs -- whether to obtain external maintenance of plumbing fixtures or external professional services -- those activities, so long as they are not comprehended by Rule G-20(c), and the creation and preservation of records of those activities, are beyond the interest of federal securities regulators. If the Board finds anything in Section 15B of the Exchange Act which it believes authorizes the Board to require a registrant to document the most trivial of service arrangements with a written contract -- lest the registrant be in violation of Rule G-8 -- it would be appropriate for the Board to identify that authority as against possible challenge.

It is PFM's objective to be of assistance to the Board in respect to the matters raised in this submission, and, accordingly, we take the liberty of suggesting that the overbreadth of proposed Rule G-8 (h)(ii)(B) can be corrected by substituting, for the phrase "referred to in", the phrase "relied upon by the registrant pursuant to" [Rule G-20(c)].

Very truly yours,

Joseph J. Connolly

Joseph J. Connolly
Counsel

sifma
Invested in America

December 8, 2014

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street
Suite 600
Alexandria, VA 22314

Re: MSRB Notice 2014-18: Request for Comment on Draft Amendments to MSRB Rule G-20, on Gifts, Gratuities and Non-Cash Compensation, to Extend its Provisions to Municipal Advisors

Dear Mr. Smith:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates this opportunity to respond to Notice 2013-18[2] (the "Notice") issued by the Municipal Securities Rulemaking Board (the "MSRB") in which the MSRB is seeking comment on draft amendments to MSRB Rule G-20, on gifts, gratuities and non-cash compensation given or permitted to be given by brokers, dealers and municipal securities dealers ("dealers"). The draft amendments are intended to apply Rule G-20 and the related record-keeping requirements of MSRB Rules G-8 and G-9 to municipal advisors.

I. Executive Summary

SIFMA has long been supportive of a setting a level regulatory playing field for dealer municipal advisors and non-dealer municipal advisors. To that end, SIFMA is generally supportive of the draft amendments in the Notice. SIFMA

[1] The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit www.sifma.org.

[2] MSRB Notice 2014-18 (October 23, 2014).

feels that the current standards set forth in MSRB Rule G-20 as they relate to dealers are strict enough to cover an entity with a fiduciary duty. SIFMA and its members do have some concerns about the prohibition of seeking or obtaining reimbursement for entertainment expenses from the proceeds of an issuance of municipal securities and does also suggest some additional minor changes to the draft amendments, including to the definition of "entertainment expenses" and having similar recordkeeping requirements for non-dealer municipal advisors and dealers.

II. Prohibition of the Use of Offering Proceeds

a. Prohibition on Reimbursement of Entertainment Expenses

SIFMA's members agree with the intent of the prohibition of seeking or obtaining reimbursement for entertainment expenses from the proceeds of an issuance of municipal securities. However, SIFMA members have concerns about the function and interpretation of the prohibition. Heretofor, under the MSRB's rules, it has not been unlawful for entertainment expenses,[3] and dealers have been able to accommodate clients who would like these expenses to be paid for and reimbursed to the dealer out of the proceeds of the offering.[4] SIFMA generally is concerned about federal regulatory creep over state and local issuers of municipal bonds. If a municipal securities issuer would like to spend their bond proceeds in a manner that is not otherwise prohibited by state or local law[5], in theory we see no reason for the MSRB to prohibit such an expenditure. SIFMA's members are concerned that this will become another area where regulators will hold dealers responsible indirectly for state and local issuer behavior that they cannot regulate directly.

SIFMA and its members also believe that the proposed rule lacks clarity. For instance, we suggest that the term, "entertainment expenses", as defined for the

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3 It should be noted that the decision in Department of Enforcement v. Gardnyr Michael Capital, Inc. (CRD No. 30520) and Pfilip Gardnyr Hunt, Jr., FINRA Disciplinary Proceeding No. 2011026664301 (Jan. 28, 2014) was the opinion of one FINRA panel, and the decision was not appealed to the federal courts. There is also no parallel FINRA Rule, as FINRA Rule 3220 does not prohibit such reimbursement.

4 We understand that such practices may be permitted or prohibited depending on applicable state or local laws.

5 If the issue is tax-exempt, assumedly all appropriate Treasury and IRS rules would also need to be complied with.

purposes of this prohibition, should be changed pursuant to the suggestions made in Setion II.b. below.[6]

If this provision continues to be included in the draft amendments to MSRB Rule G-20, dealers would potentially have to undergo significant and costly changes to their existing compliance programs related to the reimbursement of entertainment expenses.

b. Expenses Reasonably Related to a Legitimate Business Purpose

SIFMA suggests the following edits to the draft amendments to MSRB Rule G-20(e):

> (e) Prohibition of Use of Offering Proceeds. . . . For purposes of this prohibition, entertainment expenses do not include expenses reasonably related to a legitimate business purpose such as ~~reasonable and necessary expenses for~~ meals hosted by the regulated entity and directly related to the offering for which the regulated entity was retained. For purposes of this prohibition, proceeds of the offering does not include funds attributable to the underwriter's discount.

These edits to the draft language bring more clarity to the proposed amendments. Also, these edits create a rule for which in-house legal and compliance officers can develop rational policies and procedures. Firms can ascertain what expenses are "reasonably related to a legitimate business purpose". It is unclear what is a "reasonable and necessary expense for meals". For instance, is a hot meal during a meeting at a sit down restaurant reasonable and necessary, or does this limitation require cold sandwiches delivered to an internal conference room? Is a dinner after working all day permissible? Is a dinner meeting the night before rating agency meetings permissible? Firms will need to be able to interpret the new rule to draft their policies and procedures to account for these types of scenarios. Further clarity might be given to this rule if meals were limited to "a fair and reasonable amount, indexed to inflation, such as not to exceed $100 per person.

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[6] In the wake of the decision in Department of Enforcement v. Gardnyr Michael Capital, Inc. (CRD No. 30520) and Pfilip Gardnyr Hunt, Jr., *supra*, many dealer firms have updated their policies and procedures to ensure that this activity is not approved going forward.

III. Standardizing the Time Frames in Rule G-9

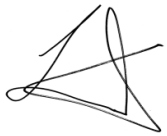
Section 975 of Title IX of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended Section 15B of the Securities Exchange Act of 1934 to require municipal advisors to register with the Securities and Exchange Commission (the "SEC"). As part of the permanent registration regime mandated by the Dodd-Frank Act, Rule 15Ba1-8 sets forth requirements for books and records relating to the business of municipal advisors. Rule 15Ba1-8(b)(1) requires municipal advisory firms to maintain and preserve all books and records required to be made for a period of not less than five years, the first two years in an easily accessible place. This SEC rule is a floor, not a ceiling, regarding record retention requirements for municipal advisors.

The draft amendments to MSRB Rule G-9 state that dealers shall preserve certain books and records for a period of not less than six years, whereas municipal advisors only need to preserve those books and records for a period of not less than five years. SIFMA and its members feel that there is no legitimate reason for the difference in record retention timeframes for dealers and municipal advisors. The different record retention rules for municipal advisors create a disparate impact on and increase the cost of compliance for dealers. These unequal rules create particular confusion and undue compliance burden when a firm acts as both dealer and municipal advisor and is thus subject to two different standards. We strongly suggest, in the spirit of fairness, that either the recordkeeping requirement for dealers should be reduced to five years, or the recordkeeping requirement for municipal advisors should be extended to six years. If such a change is not made, the MSRB will be favoring non-dealer municipal advisors over dealers, by making it less expensive for them to do business.

IV. Conclusion

To reiterate, SIFMA and its members are supportive of setting a level regulatory playing field for dealers and municipal advisors. To that end, SIFMA is generally supportive of the draft amendments in the Notice. As discussed above, SIFMA has some concerns about the prohibition of seeking or obtaining reimbursement for entertainment expenses from the proceeds of an issuance of municipal securities and does also suggest some additional minor changes to the draft amendments, including to the definition of "entertainment expenses" and having similar recordkeeping requirements for non-dealer municipal advisors and dealers. We would be pleased to discuss any of these comments in greater detail, or to provide any other assistance that would be helpful. If you have any questions, please do not hesitate to contact the undersigned at (212) 313-1130.

Sincerely yours,



Leslie M. Norwood
Managing Director and
Associate General Counsel

cc: ***Municipal Securities Rulemaking Board***
Lynnette Kelly, Executive Director
Michael L. Post, Deputy General Counsel
Sharon Zackula, Associate General Counsel
Benjamin A. Tecmire, Counsel

EXHIBIT 5

Rule G-20: Gifts, Gratuities[and], Non-Cash Compensation and Expenses of Issuance

(a) *Purpose*. The purpose of this rule is to maintain the integrity of the municipal securities market and to preserve investor and public confidence in the municipal securities market, including the bond issuance process. The rule protects against improprieties and conflicts of interest that may arise when regulated entities or their associated persons give gifts or gratuities in relation to the municipal securities or municipal advisory activities of the recipients' employers.

(b) *Definitions.* For purposes of this rule, the following terms have the following meanings:

(i) "Cash compensation" means any discount, concession, fee, service fee, commission, asset-based sales charge, loan, override or cash employee benefit received in connection with the sale and distribution of municipal securities.

(ii) "Municipal advisor" shall, for purposes of this rule, have the same meaning as in Section 15B(e)(4) of the Act, 17 CFR 240.15Ba1-1(d)(1)-(4), and other rules and regulations thereunder.

(iii) "Non-cash compensation" means any form of compensation received in connection with the sale and distribution of municipal securities that is not cash compensation, including, but not limited to, merchandise, gifts and prizes, travel expenses, meals and lodging.

(iv) "Offeror" means, with respect to a primary offering of municipal securities, the issuer, any adviser to the issuer (including, but not limited to, the issuer's financial advisor, municipal advisor, bond or other legal counsel, or investment or program manager in connection with the primary offering), the underwriter of the primary offering, or any person controlling, controlled by, or under common control with any of the foregoing; provided that, with respect to a primary offering of municipal fund securities, "offeror" shall also include any person considered an "offeror" under FINRA Rules 5110, 2320, or NASD Rule 2830 in connection with any securities held as assets of or underlying such municipal fund securities.

(v) "Person" means a natural person.

(vi) "Primary offering" means a primary offering as defined in Securities Exchange Act Rule 15c2-12(f)(7).

(vii) "Regulated entity" means a broker, dealer, municipal securities dealer or municipal advisor, but does not include the associated persons of such entity.

[(a)](c) *General Limitation on Value of Gifts and Gratuities*. No[broker, dealer or municipal securities dealer] regulated entity or any of its associated persons shall, directly or indirectly, give or provide or permit to be given or provided any thing or service of value, including gratuities, in excess of $100 per year to a person (other than an employee or partner of such

[broker, dealer or municipal securities dealer,]regulated entity), if such payments or services are in relation to the municipal securities or municipal advisory activities of the employer of the recipient of the payment or service. For purposes of this rule the term "employer" shall include a principal for whom the recipient of a payment or service is acting as agent or representative.

[(b) *Normal Business Dealings*. Notwithstanding the foregoing, the provisions](d) *Gifts and Gratuities Not Subject to General Limitation*. The general limitation of section [(a)](c) of this rule shall not[be deemed to prohibit occasional] apply to the following gifts, provided that they do not give rise to any apparent or actual material conflict of interest:

(i) *Normal Business Dealings*. Occasional gifts of meals or tickets to theatrical, sporting, and other entertainments that are hosted by the[broker, dealer or municipal securities dealer;] regulated entity or its associated persons, and the sponsoring by the[broker, dealer or municipal securities dealer] regulated entity of legitimate business functions that are recognized by the Internal Revenue Service as deductible business expenses;[or gifts of reminder advertising;] provided[,] that such gifts shall not be so frequent or so extensive as to raise any question of propriety.

(ii) *Transaction-Commemorative Gifts*. Gifts that are solely decorative items commemorating a business transaction, such as a customary plaque or desk ornament (*e.g.*, Lucite tombstone).

(iii) *De Minimis Gifts.* Gifts of *de minimis* value (*e.g.*, pens, notepads or modest desk ornaments).

(iv) *Promotional Gifts.* Promotional items of nominal value displaying the regulated entity's corporate or other business logo. The value of the item must be substantially below the $100 limit of section (c) to be considered of nominal value.

(v) *Bereavement Gifts.* Bereavement gifts that are reasonable and customary for the circumstances.

(vi) *Personal Gifts.* Gifts that are personal in nature given upon infrequent life events (*e.g.*, a wedding gift or a congratulatory gift for the birth of a child).

(e) *Prohibition of Use of Offering Proceeds*. A regulated entity that engages in municipal securities activities or municipal advisory activities for or on behalf of a municipal entity or obligated person in connection with an offering of municipal securities is prohibited from requesting or obtaining reimbursement of its costs and expenses related to the entertainment of any person, including, but not limited to, any official or other personnel of the municipal entity or personnel of the obligated person, from the proceeds of such offering of municipal securities. For purposes of this prohibition, entertainment expenses do not include ordinary and reasonable

expenses for meals hosted by the regulated entity and directly related to the offering for which the regulated entity was retained.

[(c)](f) *Compensation for Services*. [Notwithstanding the foregoing, the provisions]The general limitation of section [(a)](c) of this rule shall not apply to compensation paid as a result of contracts of employment with or[to] compensation for services rendered by another person; provided[,] that there is in existence prior to the time of employment or before the services are rendered a written agreement between the[broker, dealer or municipal securities dealer subject to this rule] regulated entity and the person who is to perform such services[;] and[provided, further, that] such agreement[shall include] includes the nature of the proposed services, the amount of the proposed compensation[,] and the written consent of such person's employer.

[(d)](g) *Non-Cash Compensation in Connection with Primary Offerings*. In connection with the sale and distribution of a primary offering of municipal securities, no broker, dealer or municipal securities dealer, or any associated person thereof, shall directly or indirectly accept or make payments or offers of payments of any non-cash compensation. Notwithstanding the[provisions] foregoing and the general limitation of section [(a)](c) of this rule, the following non-cash compensation arrangements are permitted:

(i) - (ii) No change.

(iii) payment or reimbursement by offerors in connection with meetings held by an offeror or by a broker, dealer or municipal securities dealer for the purpose of training or education of associated persons of a broker, dealer or municipal securities dealer, provided that:

(A) associated persons obtain the prior approval of the broker, dealer or municipal securities dealer to attend the meeting and attendance is not preconditioned by the broker, dealer or municipal securities dealer on achievement of a sales target or any other incentives pursuant to a non-cash compensation arrangement permitted by [paragraph (d)]subsection (g)(iv);

(B) No change.

(C) No change.

(D) the payment or reimbursement is not preconditioned by the offeror on achievement of a sales target or any other non-cash compensation arrangement permitted by[paragraph (d)] subsection (g)(iv).

(iv) No change.

(v) contributions by any person other than the broker, dealer or municipal securities dealer to a non-cash compensation arrangement between a broker, dealer or municipal securities

dealer and its associated persons, provided that the arrangement meets the criteria in[paragraph (d)] subsection (g)(iv).

[(e) Definitions. For purposes of this rule, the following terms have the following meanings:]

[(i) The term "non-cash compensation" shall mean any form of compensation received in connection with the sale and distribution of municipal securities that is not cash compensation, including but not limited to merchandise, gifts and prizes, travel expenses, meals and lodging.]

[(ii) The term "cash compensation" shall mean any discount, concession, fee, service fee, commission, asset-based sales charge, loan, override or cash employee benefit received in connection with the sale and distribution of municipal securities.]

[(iii) The term "offeror" shall mean, with respect to a primary offering of municipal securities, the issuer, any adviser to the issuer (including but not limited to the issuer's financial adviser, bond or other legal counsel, or investment or program manager in connection with the primary offering), the underwriter of the primary offering, or any person controlling, controlled by, or under common control with any of the foregoing; provided, however, that, with respect to a primary offering of municipal fund securities, "offeror" shall also include any person considered an "offeror" under NASD Rule 2710, NASD Rule 2820 or NASD Rule 2830 in connection with any securities held as assets of or underlying such municipal fund securities.]

[(iv) The term "primary offering" shall mean a primary offering defined in Securities Exchange Act Rule 15c2-12(f)(7).]

Supplementary Material

.01 Valuations of Gifts. In general, gifts should be valued at the higher of cost or market value, exclusive of tax and delivery charges. When valuing tickets for sporting or other entertainment events, a regulated entity should use the higher of cost or face value. If gifts are given to multiple recipients, regulated entities should record the names of each recipient and calculate and record the value of the gift on a pro rata per recipient basis, for purposes of ensuring compliance with the general limitation of section (c).

.02 Aggregations of Gifts. Regulated entities must aggregate all gifts given by the regulated entity and each associated person of the regulated entity to a particular recipient that are subject to the general limitation of section (c) over the course of a year. Regulated entities must consistently aggregate all gifts on a calendar year basis, fiscal year basis, or rolling basis beginning with the first gift to any particular recipient.

.03 Promotional Gifts and "Other Business Logo." Logos of a product or service being offered by a regulated entity, for or on behalf of a client or an affiliate of that regulated entity, would constitute an "other business logo" under subsection (d)(iv). The logo of a 529 college

savings plan for which a regulated entity is acting as distributor, for example, would constitute such an "other business logo."

.04 Personal Gifts. A gift that is personal in nature under subsection (d)(vi) is not subject to the general limitation of section (c) of this rule because that limitation applies only to payments or services that are in relation to the municipal securities or municipal advisory activities of the employer of the recipient. In determining whether a gift is personal in nature and not in relation to such activities of the employer of the recipient, a number of factors will be considered including, but not limited to, the nature of any pre-existing personal or family relationship between the associated person giving the gift and the recipient and whether the associated person or the regulated entity with which he or she is associated paid for the gift. When a regulated entity bears the cost of a gift, either directly or indirectly by reimbursing an associated person, the gift will be presumed to be given in relation to the municipal securities or municipal advisory activities, as applicable, of the employer of the recipient within the meaning of the general limitation of section (c) of this rule.

.05 Applicability of State or Other Laws. Regulated entities and their associated persons may be subject to other duties, restrictions or obligations under state or other laws in this area. Nothing contained in this rule shall be deemed to supersede any more restrictive provision of state or other laws applicable to the activities of regulated entities or their associated persons.

* * * * * *

Rule G-20 Interpretations

Dealer Payments in Connection With the Municipal Securities Issuance Process

January 29, 2007

The Municipal Securities Rulemaking Board ("MSRB") is publishing this notice to remind brokers, dealers and municipal securities dealers (collectively, "dealers") of the application of Rule G-20, on gifts, gratuities and non-cash compensation, and Rule G-17, on fair dealing, in connection with certain payments made and expenses reimbursed during the municipal bond issuance process. These rules are designed to avoid conflicts of interest and to promote fair practices in the municipal securities market.

Rule G-20, among other things, prohibits dealers from giving, directly or indirectly, any thing or service of value, including gratuities, in excess of $100 per year to a person other than an employee or partner of the dealer, if such payments or services are in relation to the municipal securities activities of the recipient's employer. The rule provides an exception from the $100 annual limit for "normal business dealings," which includes occasional gifts of meals or tickets to theatrical, sporting, and other entertainments hosted by the dealer (i.e., if dealer personnel accompany the recipient to the meal, sporting or other event), legitimate business functions sponsored by the dealer that are recognized by the Internal Revenue Service as a deductible

business expense, or gifts of reminder advertising. However, these “gifts” must not be “so frequent or so extensive as to raise any question of propriety.” Rule G-17 provides that, in the conduct of its municipal securities activities, each dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest or unfair practice.

Dealers should consider carefully whether payments they make in regard to expenses of issuer personnel in the course of the bond issuance process, including in particular but not limited to payments for which dealers seek reimbursement from bond proceeds, comport with the requirements of these rules. Payment of excessive or lavish entertainment or travel expenses may violate Rule G-20 if they result in benefits to issuer personnel that exceed the limits set forth in the rule, and can be especially problematic where such payments cover expenses incurred by family or other guests of issuer personnel. Depending on the specific facts and circumstances, excessive payments could be considered to be gifts or gratuities made to such issuer personnel in relation to the issuer’s municipal securities activities. Thus, for example, a dealer acting as a financial advisor or underwriter may violate Rule G-20 by paying for excessive or lavish travel, meal, lodging and entertainment expenses in connection with an offering (such as may be incurred for rating agency trips, bond closing dinners and other functions) that inure to the personal benefit of issuer personnel and that exceed the limits or otherwise violate the requirements of the rule.

Furthermore, dealers should be aware that characterizing excessive or lavish expenses for the personal benefit of issuer personnel as an expense of the issue may, depending on all the facts and circumstances, constitute a deceptive, dishonest or unfair practice. A dealer may violate Rule G-17 by knowingly facilitating such a practice by, for example, making arrangements and advancing funds for the excessive or lavish expenses to be incurred and thereafter claiming such expenses as an expense of the issue.

Dealers are responsible for ensuring that their supervisory policies and procedures established under Rule G-27, on supervision, are adequate to prevent and detect violations of MSRB rules in this area. The MSRB notes that state and local laws also may limit or proscribe activities of the type addressed in this notice.

By publishing this notice, the MSRB does not mean to suggest that issuers or dealers curtail legitimate expenses in connection with the bond issuance process. For example, it sometimes is advantageous for issuer officials to visit bond rating agencies to provide information that will facilitate the rating of the new issue. It is the character, nature and extent of expenses paid by dealers or reimbursed as an expense of issue, even if thought to be a com-mon industry practice, which may raise a question under applicable MSRB rules.

The MSRB encourages all parties involved in the municipal bond issuance process to maintain the integrity of this process and investor and public confidence in the municipal securities market by adhering to the highest ethical standards.

[Finally, the MSRB notes that NASD recently published guidance to assist dealers in complying with NASD Rule 3060 on influencing or rewarding employees of others. NASD’s guidance relates to personal gifts/exclusions; de minimis and promotional items; aggregation of gifts;

valuation of gifts; gifts incidental to business entertainment; and supervision and recordkeeping.[1] This guidance applies as well to the comparable provisions of MSRB Rule G-20.]

_____

[[1] *See* NASD Notice to Members 06-69 (December 2006).]

* * * * * *

Rule G-8: Books and Records to be Made by Brokers, Dealers, and Municipal Securities Dealers[,] and Municipal Advisors

(a) *Description of Books and Records Required to be Made*. Except as otherwise specifically indicated in this rule, every broker, dealer and municipal securities dealer shall make and keep current the following books and records, to the extent applicable to the business of such broker, dealer or municipal securities dealer:

(i) - (xvi) No change.

(xvii) *Records Concerning Compliance with Rule G-20.* Each broker, dealer and municipal securities dealer shall maintain:

(A) a separate record of any gift or gratuity [referred]subject to [in]the general limitation of Rule G-20(c)[(a)];

(B) all agreements referred to in Rule G-20(f)[(c)] and records of all compensation paid as a result of those agreements; and

(C) records of all non-cash compensation referred to in Rule G-20(g)[(d)]. The records shall include the name of the person or entity making the payment, the[names] name(s) of the associated[persons] person(s) receiving the payments (if applicable), and the nature (including the location of meetings described in Rule G-20(g)(iii)[(d)(iii)], if applicable) and value of non-cash compensation received.

(xviii) - (xxvi) No change.

(b) - (g) No change.

(h) *Municipal Advisor Records*. Every municipal advisor that is registered or required to be registered under section 15B of the Act and the rules and regulations thereunder shall make and keep current the following books and records.

(i) No change.

(ii) [Reserved] *Records Concerning Compliance with Rule G-20.*

(A) a separate record of any gift or gratuity subject to the general limitation of Rule G-20(c); and

(B) all agreements referred to in Rule G-20(f) and records of all compensation paid as a result of those agreements.

(iii) - (v) No change.